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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AEA-20]

Establishment of Transition Area; Myerstown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a 700 foot Transition Area at Myerstown, PA, to support the development of a new standard instrument approach procedure (SIAP) to the Decks Airport, Myerstown, PA. This action establishes additional controlled airspace to provide greater segregation between aircraft operating under instrument flight rules from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 u.t.c. February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, FAA Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

On June 9, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700 foot Transition Area at Myerstown, PA (57 FR 34530). The amendment would establish that amount of controlled airspace deemed necessary by the FAA to contain aircraft operating under instrument flight rules in controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Transition Areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Transition Area listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a 700 foot Transition Area at Myerstown, PA, due to the development of a new SIAP to the Decks Airport, Myerstown, PA.

The FAA has determined that the regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Area

* * * * *

AEA PA TA Myerstown, PA [New]
Decks Airport (lat. 40°21'08" N., long. 76°19'51" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Decks Airport.

* * * * *

Issued in Jamaica, New York, on December 1, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-30888 Filed 12-18-92; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1211

Final Rule: Requirements for Automatic Residential Garage Door Operators: Amendment and Certification and Recordkeeping Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Improvement Act of 1990 provided that, as of January 1, 1991, each automatic residential garage door opener manufactured on or after that date for sale in the United States shall conform to the entrapment protection requirements of the Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, as revised May 4, 1988. Congress stated that these requirements are to be considered a consumer product safety rule issued by the Commission under section 9 of the Consumer Product Safety Act.

Congress further required that as of January 1, 1993, residential garage door openers manufactured on or after that date for sale in this country must comply with additional entrapment protection requirements developed by UL. In this final rule, the Commission is codifying the additional entrapment protection provisions of the revised UL 325 standard.

On March 18, 1992, the Commission issued proposed rules containing certification and recordkeeping requirements for residential garage door operators. This document issues those certification and recordkeeping requirements in final.

DATES: Congress required that the revised entrapment protection requirements stated at subpart A of this rule will apply to automatic residential garage door openers manufactured on or after January 1, 1993 for sale in the United States. The certification and recordkeeping rules at subparts B and C will become effective for automatic residential garage door openers manufactured on or after January 21, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Mike Bogumill, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400.

SUPPLEMENTARY INFORMATION: This document amends existing automatic residential garage door entrapment protection requirements and specifies certification and recordkeeping requirements. The three aspects of this document are discussed below.

I. Amended Entrapment Protection Requirements

A. Background

Section 203 of the Consumer Product Safety Improvement Act of 1990 (the "Improvement Act") stated that the entrapment protection requirements of the Underwriters Laboratories, Inc. ("UL") Standards for Safety—UL 325, third edition, as revised May 4, 1988, shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act. [Consumer Product Safety Improvement Act of 1990, Public Law No. 101–608, 203(a), (b), 104 Stat. 3110. Congress provided that automatic residential garage door openers [1] manufactured on or after January 1, 1991 must conform to the 1988 version of the UL 325 entrapment protection requirements. *Id.* 203(b)(1). This standard required that an automatic garage door opener shall reverse within two seconds of contacting a two inch (50.8–mm) test object whose top inch is resilient. In addition, the standard required that the door reopen if the bottom limit switch is not activated within thirty seconds after the control is pressed to start the closing cycle. There are termed inherent entrapment protection measures.

The Commission codified these entrapment protection requirements on June 19, 1991. 56 FR 28050.

Congress also provided that additional entrapment protection requirements issued by UL in the future could become effective as mandatory safety standards. Accordingly, section 203 required that all automatic residential garage door openers manufactured on or after January 1, 1993 for sale in the United States must conform to the additional entrapment protection requirements of UL 325 that are effective on or before January 1, 1992. Improvement Act, section 203(b)(2)(A).

UL has revised the entrapment protection provisions of UL 325. Thus, these provisions will become effective as a mandatory Commission standard and will apply to openers manufactured on or after January 1, 1993. For the convenience of those subject to these requirements, the Commission is codifying the provisions.

Congress also provided that if UL purposes further revisions to UL 325, UL must notify the Commission and the proposed revision shall be incorporated in the consumer product safety rule (unless the Commission notifies UL within 30 days that the revision does not carry out the purposes of the Congressionally mandated requirements). *Id.* section 203(c).

Congress also mandated certain labeling requirements that went into effect on January 1, 1991. These requirements are unchanged under the revised standard. A manufacturer selling or offering for sale in the United States an automatic residential garage door opener on or after that date must clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of subsection (b) [UL 325 entrapment protection provisions]. *Id.* section 203(d). These labeling requirements are satisfied by display of the UL logo or listing mark, and compliance with the date marking requirements of UL 325 on the container and the system. *Id.*

B. The Standard

This notice sets forth the entrapment protection provisions of the most recent revision of UL 325 which Congress mandated as a standard of the Commission. The provisions recounted here are only excerpts from the UL standard for safety—UL 325—for door, drapery, gate, louver, and window operators and systems. This UL standard contains many provisions not stated in this notice because Congress only mandated issuance of the entrapment protection provisions as a Commission regulation. Thus, those provisions of the UL standard that relate to entrapment protection are codified as a Commission regulation.

UL's changes to its 1988 standard, whose entrapment protection provisions were codified as a Commission rule at 16 CFR Part 1211, are fairly extensive. Thus, in codifying the new standard, the Commission is revising and renumbering the sections of the standard previously codified.

Although the revised standard contains many detailed technical requirements, in essence it requires that residential garage door operators contain either an external entrapment protection device, or have a constant contact control button, in addition to the inherent entrapment protection that was required by the earlier standard.

An overview of the revised standard follows.

Section 1211.1 provides that the standard applies to all residential garage door operators manufactured on or after January 1, 1993 for sale in the United States.

Section 1211.2 supplies the following definition of "residential garage door operator": a vehicular door operator which (1) serves a residential building of one to four single family units; (2) is rated 600 volts or less; and (3) is intended to be employed in ordinary locations in accordance with the current National Electrical Code, NFPA 70. This definition includes UL's change in its 1988 definition so that the definition is specifically limited to operators that serve residential buildings with one to four family units. This definition is consistent with the Commission's earlier interpretation that the term excludes garage door operators in apartment building garages.

Section 1211.3 provides an explanation of the units of measurement referred to in the standard.

Section 1211.4 sets out the general requirements for protection against entrapment. Like the previous standard, it provides that an automatically-reset protective device, if used, must not result in a risk of injury to persons. It also provides that electronic or solid-state circuits intended to reduce the risk of injury must comply with the Standard for Safety-Related Controls Employing Solid-State Devices, UL 991.

[1] Congress used the term "garage door opener"; however, the UL standard uses the term "garage door operator." This notice uses the terms interchangeably.

This UL standard and other standards referenced in the rule are available from UL or may be examined at the offices of the Federal Register or at CPSC.

Section 1211.5 sets forth test parameters that should be used in investigating circuits as required by section 1211.4(c).

Section 1211.6 states the general entrapment protection requirements for residential garage door operators. The operator must have inherent entrapment protection that complies with section 1211.7. In addition, the operator must either (1) require constant pressure on a control to lower the door, reverse direction and open the door when constant pressure on a control is removed before the operator reaches its lower limit, and permit a portable transmitter, if supplied, to only function to cause the operator to open the door; or (2) have the means to attach an external entrapment protection device that complies with the specific requirements of this standard. Specific requirements for a switch or relay are also described in section 1211.6.

Section 1211.7 describes the inherent entrapment requirements of the standard. A downward moving operator must initiate reversal of the door within two seconds of contact with a one-inch high solid object. After it reverses the door, the operator must return the door to and stop at its utmost position (unless a control is actuated or an inherent entrapment circuit senses an obstruction). This section specifies tests for compliance with these requirements.

Section 1211.8 requires that an external entrapment protection device must consist of either (1) a photoelectric sensor that causes an operator closing a door to reverse the door's direction and prevents the operator from closing an open door; (2) an edge sensor on the edge of the door that causes an operator closing a door to reverse the door's direction; or (3) another device that provides equivalent entrapment protection.

Section 1211.9 requires that means to manually detach the operator from the door be provided, be colored red, and be easily distinguishable from the rest of the operator.

Section 1211.10 specifies requirements for all entrapment protection devices. It also provides several tests for specific aspects of the devices. These are a current protection test, a splash test, an ultraviolet light exposure test, and a resistance to impact test.

Section 1211.11 contains requirements for photoelectric sensors. These include a normal operation test, a sensitivity test, and an ambient light test.

Section 1211.12 provides requirements for edge sensors. These are a normal operation test, an endurance test, an elastomeric material conditioning test, and a puncture resistance test.

Section 1211.13 requires that an instruction manual must accompany a residential garage door operator and specifies installation instructions and user instructions that must appear in the manual.

Section 1211.14 requires that a residential garage door operator be provided with a label for field installation. The label contains a possible risk and consequence statement, avoidance statements, and instructions.

Section 1211.15 requires permanent marking of the garage door operator. The marking must consist of (1) the manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified; (2) the catalog number or the equivalent; (3) the voltage, frequency, and input in amperes or watts; and (4) the date or other dating period of manufacture not exceeding any three consecutive months (the date may be abbreviated or in an established or otherwise accepted code). If the manufacturer produces or assembles the operator at more than one factory, the marking must identify the particular factory.

This section further provides that the carton and instruction manual for an operator must be marked with the word "WARNING" and a statement indicating that the operator should only be used with the appropriate door. The operator also must be marked to warn that the door's reversal should be tested after adjusting the force or limits of travel. The section also has certain marking requirements for accessories that are intended for installation with garage door operators.

Section 1211.16 restates the labeling requirement established by Congress which requires a manufacturer to identify, on the container of a residential garage door opener and on the system itself, the month or week and the year the system was manufactured and that it conforms with the requirements of this standard. Congress provided that UL marking would satisfy this statutory labeling requirement. These statutory labeling requirements are unchanged from the previous standard.

C. Preemption

Generally, section 26 of the CPSA governs preemption of consumer product safety standards. 15 U.S.C. 2075. That section provides that whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

[15 U.S.C. 2075(a).]

However, in the Improvement Act, Congress issued a special preemption provision pertaining to automatic residential garage door operators. Subsection 203(f) of that Act provides that, with respect to the congressionally required entrapment protection provisions, only those provisions of laws of States or political subdivisions which relate to the labeling of automatic residential garage door openers and those provisions which do not provide at least the equivalent degree of protection from the risk of injury associated with automatic residential garage door openers as the consumer product safety rule provides shall be subject to the preemption provisions of section 26(a) of the CPSA, 15 U.S.C. 2075. *Id.* 203(f). Thus, state law provisions governing, for example, repair and servicing requirements, would not be preempted. *See* H.R. Rep. No. 914, 101st Cong., 2d Sess. 20 (1990).

II. The Certification Rule.

A. Certification Under the CPSA

Section 14(a)(1) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2063(a)(1), requires manufacturers (including importers) and private labelers of a product subject to a consumer product safety standard to issue a certificate which states that the product conforms to all applicable consumer product safety standards, specifies the applicable standard, states the name of the manufacturer or private labeler issuing the certificate, and includes the date and place of manufacture. The certificate must accompany the product or be furnished to any distributor or retailer to whom the product is delivered. Section 14(a) also requires that the certificate be based

on a test of each product or upon a reasonable testing program. 15 U.S.C. 2063(a). Section 14(c) of the CPSA authorizes the Commission to issue rules requiring a product to bear a label containing information similar to that required by section 14(a) for certificates.

The failure to issue a certificate of compliance or the issuance of a certificate which is false or misleading in any material respect violates section 19(a)(6) of the CPSA, *id.* section 2068(a)(6), and may subject the firm to civil and criminal penalties as provided in sections 20 and 21 of the CPSA. *Id.* sections 2069 and 2070.

Thus, the CPSA in conjunction with the Improvement Act currently require that garage door operators manufactured on or after January 1, 1991 certify that they comply with the entrapment protection provisions of UL 325, now codified as a Commission rule, 56 FR 28050. While certification is currently required by section 14(a) of the CPSA, presently, the specific wording and form of the certification may be determined by the manufacturer.

B. The Certification Rule

The Commission issued a proposed certification regulation to specify the certification label that manufacturers, importers, and private labelers will use in the future in certifying that their products comply with the applicable safety standard. 53 FR 9395. The Commission received one comment on the proposed rule, which is discussed below, and is now issuing the rule in final form.

As stated above, section 203(d) of the Improvement Act requires certain labeling on the operator system and its container. (Unlike section 14 of the CPSA, section 203(d) does not specifically discuss the responsibility of private labelers to label operators or containers.) Section 203(d) also states that display of the UL logo or listing mark and compliance with the date marking requirements of UL 325 satisfies the labeling requirements of section 203(d). Accordingly, those manufacturers that have obtained UL certification of their operators may allow the UL logo or listing mark to serve as the "certificate of compliance" required by this certification rule. Those manufacturers that have not obtained UL certification for their operators will be required to issue satisfactory certificates of compliance in the form of permanent labels attached to each operator and its container. Thus, the Commission is not mandating the UL logo or listing mark as a certification label, but will allow them to serve as a certification label since Congress provided that the UL logo or listing mark would satisfy the statutory labeling requirement it prescribed in section 203 of the Improvement Act.

This rule provides guidance to manufacturers concerning the certification required by section 14 of the CPSA, and it describes the certification label that would be required of non-UL listed automatic residential garage door operators upon the effective date of the rule.

C. Comment on the Proposed Rule

The comment received in response to the proposed rule stated that testing laboratories other then UL may use the UL 325 standard to test the safety of garage door operators. The commenter stated the Commission should not make the UL logo or listing mark mandatory.

The Commission recognizes that other organizations may test to the UL 325 standard and would apply their listing mark to indicate conformance with the safety standard. As stated above, the Commission is not mandating the UL logo or listing mark. Rather, it is providing, as Congress did, that the UL logo or listing mark will satisfy labeling requirements. Because Congress provided that display of the UL logo or listing mark would satisfy the statutory labeling requirements of section 203 of the Improvement Act, the Commission is allowing the UL logo or listing mark to serve as a certification label that would satisfy section 14 of the CPSA. Under the certification rule, other listing marks are not prohibited. However, operators that display other listing marks must also have the CPSC certification label specified by the rule. The rationale for this is that the basis for specifying a certification rule is to have conformity. Consumers and CPSC investigators know to look for the specified CPSC label. The certification rule provides the exception for products with the UL logo or listing mark because Congress stated that these symbols would satisfy its statutory labeling requirement. Not allowing this exception for a certification label would only increase confusion.

D. Summary of Certification Provisions

Section 1211.20 of the certification rule explains the purpose, scope, and application of the rule. It restates the requirement of 14(a) of the CPSA that manufacturers (defined to include importers and, for purposes of testing only, assemblers) and/or private labelers must either test each individual operator or devise "reasonable testing programs."

Section 1211.21 provides that the specific labeling requirement of the certification rule will become effective for garage door operators manufactured on or after the effective date which will be 30 days from the date of publication.

Section 1211.22 provides definitions for terms used in the certification rule.

Section 1211.23 provides guidance for establishing a reasonable testing program. A "reasonable testing program" is defined in the rule as one which provides reasonable assurance that the certified operators comply with the standard. The rule allows manufacturers and importers to develop their own reasonable testing programs.

The Commission believes that it is unnecessary to specify the testing program for the manufacturers. An operators's ability to meet the performance requirements is controlled by the operator's design, materials, and method of production. The Commission will test for compliance with the standard by using procedures based on the requirements contained in 16 CFR 1211 subpart A as revised for 1993. A manufacturer's tests may include tests prescribed in 16 CFR 1211 subpart A or other reasonable test procedures that can be demonstrated to provide an equivalent measure of entrapment protection.

Although no particular testing program is specified, the rule describes general principles that should be followed in a "reasonable testing program." For certification testing, the operators should be grouped into "production lots." Production lots are defined as a quantity of operators from which certain operators are selected for testing prior to certifying the lot. All operators in a production lot should be essentially identical in those design, construction, and material features which relate to the ability of an operator to comply with the standard. Sample operators are then selected from the production lot for testing in accordance with the reasonable testing program.

If the production lot has been properly limited as to number and design of operators, it should be possible for a manufacturer to test samples from the lot for certification and not to test again as long as the operators in the production lot are essentially identical to the operators tested for certification in all respects relating to the ability of the operator to meet the requirements of the standard. After a lot has been established, if there are any changes in the specifications for the operator which could affect the operator's performance in relation to the requirements of the standard, the manufacturer should establish a new production lot for testing. Similarly, if there are changes in parts, suppliers of

parts, or production methods which could affect the ability of the operator to comply with the standard, the manufacturer should establish a new production lot for testing. Furthermore, if the testing program shows that an operator does not comply with a requirement of the standard, no operator in the production lot should be certified as complying until all non-complying operators in the lot have been identified and destroyed or altered by repair, redesign, or use of different materials or components to the extent necessary to make the operators conform to the standard.

It should be noted that the obligation to issue a certificate of compliance based on a reasonable testing program is in addition to, and not in place of, the obligation to manufacture, import, distribute, or private label only operators which meet the requirements of the standard.

Consequently, if the Commission tests operators in accordance with the standard and obtains failing results, the Commission may begin enforcement action for violation of section 19(a)(1) of the CPSA, even though the manufacturer or importer of the operator may have issued a certificate of compliance and may have based that certificate on a reasonable testing program which meets the requirements of the regulation below.

Section 22 of the CPSA authorizes the Commission to enjoin any person from violating section 19, and to seize any product which does not comply with an applicable standard. 15 U.S.C. 2071(a)(1). In addition, sections 20 and 21 of the CPSA authorize the Commission to seek civil or criminal penalties for violation of the CPSA in appropriate cases. *Id.* sections 2069 and 2070.

Section 1211.24 of the certification rule requires manufacturers (including importers) and/or private labelers of non-UL listed automatic residential garage door operators manufactured after December 31, 1992, to affix to the operators permanent labels which shall be considered a "certificate" of compliance, as that term is used in section 14(a) of the CPSA. Section 14(a) directs manufacturers and private labelers—if the product bears a private label—to certify that a product conforms to the garage door operator safety rule. *Id.* sec. 2063(a)(1). Even though section 203(d) of the Improvement Act requires only manufacturers to label operator systems and containers in a certain way, the Commission believes that, since the authority for the certification rule rests in section 14 of the CPSA, the rule should apply to private labelers in a manner consistent with the terms of section 14 of the CPSA.

As mentioned above, section 203(d) of the Improvement Act states that display of the UL logo or listing mark, and compliance with the date marking requirements of UL 325, on the operator and its container satisfies the labeling requirements of the garage door safety rule. In view of that provision, the Commission believes that the UL logo or listing mark on the operator and compliance with the date marking requirements of UL 325 (as will be codified at 16 CFR 1211.15), should also satisfy the certificate of compliance/permanent label aspect of the proposed certification rule. Any operator that bears the UL logo or listing mark will not be required to display the separate certification label described below. However, manufacturers and private labelers of UL listed operators may choose to use the certification label on the operator and its container if they wish.

The certification label required on non-UL listed operators (and their containers) must include the following information: (1) The statement: "Meets CPSC _____(insert 1993 or later year of applicable standard) garage door operator entrapment protection requirements," and (2) identification of the production lot. The standard as revised, to be codified at 16 CFR 1211.15, requires the manufacturer's name, the system date code, and the factory location (where more than one factory is used to produce the operator). All of this information may be placed on the same label.

The certification label should be visible and legible to the ultimate consumer. It should be a permanent part of the operator and should remain affixed for the life of the operator. It is expected, however, that the permanent label on the operator will not be immediately visible to the consumer at the time of sale because of packaging or other marketing practices. In that event, a second label stating "Meets CPSC _____(insert 1993 or later year of applicable standard) garage door operator entrapment protection requirements," along with the month or week and year of manufacture as required by § 1211.16, is required on the container, or if the container is not visible, on the promotional material used with the sale of the operators.

Section 1211.25 of the rule provides that importers of operators should issue certification labels, but may rely on the foreign manufacturers' tests to support the certification if the records of the tests are maintained in the United States and the importer is a resident of the U.S. or has a resident agent in the U.S. Requirements that manufacturer's records of the type described above must be maintained in the U.S. and the importer must reside, or maintain a resident agent, in this country are necessary to enable the Commission investigators to inspect the records and monitor compliance with the standard. Importers who certify are responsible for inspecting the test records to determine that all testing has been performed properly, that the records of the tests are accurate and complete, and that the tests provide reliable assurance that all operators imported comply with the standard.

III. The Recordkeeping Rule

The Commission issued a proposed recordkeeping rule on March 18, 1992, and received no comments on it. The Commission is now issuing the rule in final form.

The recordkeeping rule requires that manufactures (including importers) of automatic residential garage door operators subject to the standard maintain written records demonstrating that compliance certificates are based on tests of each operator or a reasonable testing program.

Private labelers of the operators should maintain records which allow them to identify the manufacturer of each operator and relate each operator to a particular manufacturing date code and production lot.

No specific format is prescribed for the records, but the records should contain sufficient information to show the nature of a firm's testing procedures, including the basis for, and identity of, the production lot. The records should also show whether the operators (which are being marketed and certified to comply with the standard) are essentially identical, in every respect that relates to compliance with the standard, to the operators that were tested for conformance with the standard. The records should also indicate exactly which operators or production lots of operators are being certified as a result of a specified test or series of tests. Records should describe the type of tests conducted (in sufficient detail that they may be replicated), the production interval selected, the sampling scheme and the pass/reject criteria. Records of testing results should include the date and location of testing, the identity of passing and failing units, the nature of failure(s) and specific reasons for failure. The records should state the specific actions taken to address any failure and the additional actions taken to assure that corrective actions had the intended effect.

The records must be maintained a minimum of three years from the date of certification of each operator or the last operator in each production lot. This is because the Commission staff estimates that some operators can reasonably be expected to remain in inventory and not reach consumers for a period of three years, and the staff is particularly interested in being able to check the records concerning any operators held in inventory.

In addition to aiding the Commission's enforcement of the standard and the certification rule, these records could be helpful to a manufacturer in limiting the scope of a possible recall order under section 15 of the CPSA. See 15 U.S.C. 2064. (The Commission is authorized under section 15 to order a manufacturer of a product which is found, after opportunity for a hearing, to present a "substantial product hazard" to elect one of the following remedies: repair the defective product, replace the product with a non-defective product, or refund the purchase price of the product. "Substantial product hazard" is defined in section 15 to mean a failure to comply with an applicable consumer product safety rule, or a product defect, if either creates a substantial risk of injury to the public.) Records of the date and location of manufacture, dates of changes in specifications, parts, suppliers, or manufacturing procedures, and the dates and results of quality control or recertification testing are examples of the types of information which could serve to identify the period of time during which non-complying or defective operators were manufactured. In the absence of such information, the entire production of a particular type of operator could be subject to a recall order.

The recordkeeping requirements of the rule are issued under the authority of section 16(b) of the CPSA, which authorizes requirements for the establishment and maintenance of records that are necessary to implement the act or to determine compliance with regulations issued under the act. 15 U.S.C. 2065(b). The Commission believes the records required by the proposed rule are necessary to monitor compliance with the garage door operator standard.

Section 16(b) further provides that these records must be made available for inspection by duly designated agents of the Commission upon request. *Id.*

IV. Anticipated Impact of the Rules

A. The Revised Standard

Because Congress mandated the revised UL entrapment protection provisions, the Commission has not made findings concerning the impact of the revised standard.

B. The Certification Rule

The stock of garage door operators in use is estimated to be at least 27 million units (with an average life expectancy of 15 years), of which 19 million were manufactured since 1982, the year the UL voluntary standard was revised to include entrapment protection provisions. In a 1991 industry survey, the Commission staff found that 14 firms manufactured or imported garage door operators, of which 12 are listed as complying with UL 325. Four of these 12 firms account for over 70 percent of the garage door operator market. In 1990, shipments were estimated at up to 2.5 million units with retail revenues of $552 million.

Industry representatives estimated that increases in per unit labeling costs for firms marketing non-UL operators will range from as low as $.10–.25 (when labeling is phased into the production process), to as high as $1.10 (when labeling requires the over-stickering of inventory). Thus, the annual cost for non-UL listed firms will be at least $2,500. These costs are based on an estimate that 99% of all operators are UL-listed and on 1990 levels of production (about 2.48 million UL-listed and 25,000 non UL-listed operators).

It is anticipated that manufacturers of garage door operators will pass any increases in costs resulting from the proposed certification rule directly to the consumer. An estimate of the per unit retail price impact of certification labeling on non-UL listed residential garage door operators would range from $.22 to as high as $2.42. This represents a total annual cost of at least $5,500 based on recent annual sales.

C. The Recordkeeping Rule

The majority of firms manufacturing garage door operators are listed as complying with the UL 325 standard, and these firms have recordkeeping activities related to the UL requirements. The recordkeeping rule will have minimal additional impact on variable costs for these firms. There are no data on the per unit recordkeeping costs for non-UL listed operators. However, since the certification and recordkeeping rule for walk-behind mowers issued in 1979 closely parallels the rules for garage door operators, a rough approximation can be derived by using the per unit retail price impact of the recordkeeping rule estimated for walk-behind mowers. In May 1977, Stanford Research Institute predicted the per unit retail price impact of that recordkeeping to be $.50 ($1.08 in 1990 dollars). Based on 1990 unit sales of about 25,000 non-UL listed operators, this represents a total annual cost to consumers of about $27,000 for the non-UL listed operators.

V. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, agencies are generally required to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities, unless the head of the agency certifies that the rule will not, if promulgated, have a significant effect on a substantial number of small entities.

The Commission staff analyzed the potential effect the proposed certification and recordkeeping rules could have on industry and concluded that the cost to industry is not anticipated to be large. Potential effects on small firms would not be disproportionate to the effects on larger firms. Thus, in the notice of proposed rulemaking, the Commission certified that no significant adverse impact on a substantial number of entities would result from the proposed rules. This remains unchanged.

No regulatory flexibility analysis is required for the revised entrapment protection provisions since they became effective by Congressional mandate.

VI. Environmental Considerations

The Commission's rules at 16 CFR part 1021 provide that product certification or labeling rules normally have no potential for affecting the environment. 16 CFR 1021.5(b)(2). The Commission found that the proposed certification and recordkeeping rules would have no significant effect on the human environment and that no environmental review was necessary. This remains unchanged.

No environmental analysis is required for the revised entrapment protection provisions since they became effective by Congressional mandate.

VII. Effective Dates

As explained above, Congress provided that the revised entrapment protection requirements of UL 325 would become effective as a Commission rule and that residential garage door operators manufactured on or after January 1, 1993 must conform to these additional requirements. Thus,

these entrapment protection requirements will become effective on that date.

Under section 14(a) of the CPSA, residential garage door operators must certify that they comply with the Commission standard applicable to those operators. The specific labeling requirements of this certification rule will become effective on January 21, 1993 for operators manufactured on or after that date. The recordkeeping rule will become effective on January 21, 1993 for operators manufactured on or after that date.

List of Subjects in 16 CFR Part 1211

Consumer protection, labeling, packaging and containers, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Consumer Product Safety Commission is amending title 16, chapter II, by revising part 1211 as follows:

1. The authority citation for part 1211 is revised to read as follows:

Authority: Sec. 203, Pub. L. 101–608, 104 Stat. 3110; Secs. 14 and 16, 15 U.S.C. 2063 and 2065.

2. The existing text of part 1211 is designated as Subpart A—The Standard and is revised to read as follows:

PART 1211—SAFETY STANDARD FOR AUTOMATIC RESIDENTIAL GARAGE DOOR OPERATORS

Subpart A—The Standard

Sec.

Subpart A—The Standard

§ 1211.1 Effective date.

This standard applies to all residential garage door operators manufactured on or after January 1, 1993 for sale in the United States.

§ 1211.2 Definition.

As used in this part 1211:

"Residential garage door operator" means a vehicular door operator which:

(a) Serves a residential building of one to four single family units;

(b) Is rated 600 volts or less; and

(c) Is intended to be employed in ordinary locations in accordance with the National Electrical Code, NFPA 70, 1993 edition. This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Mass. 02269–9101, tel. 1–800–344–3555. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 1211.3 Units of measurement.

If a value for measurement as given in these requirements is followed by an equivalent value in other units, in parentheses, the second value may be only approximate. The first stated value is the requirement.

§ 1211.4 General requirements for protection against risk of injury.

(a) If an automatically reset protective device is employed, automatic restarting of a motor shall not result in a risk of injury to persons.

(b) A residential garage door operator is considered to comply with the requirement in paragraph (a) of this section if some means is provided to prevent the motor from restarting when the protector closes.

(c) An electronic or solid-state circuit that performs a back-up, limiting, or other function intended to reduce the risk of fire, electric shock, or injury to persons, including entrapment protection circuits, shall comply with the requirements in the Standard for Tests for Safety-Related Controls Employing Solid-State Devices, UL 991, 1st ed., dated July 19, 1991, including environmental and stress tests appropriate to the intended usage of the end-product. This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Ill.60062–2096. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

§ 1211.5 General testing parameters.

(a) The following test parameters are to be used in the investigation of the circuit covered by § 1211.4(c) for compliance with the Standard for Tests for Safety-Related Controls Employing Solid-State Devices, UL 991, 1st ed., dated July 19, 1991, as incorporated by reference in paragraph (b)(3) of this section:

(1) Electrical supervision of critical components is acceptable if it results in an operator being inoperative with respect to downward movement of the door.

(2) A field strength of 3 volts per meter is to be used for the Radiated EMI Test.

(3) The Composite Operational and Cycling Test is to be used for 14 days at temperature extremes of minus 35° Celsius (minus 31°F) and 70° C (158°F).

(4) Exposure Class H5 is to be used for the Humidity Test.

(5) A vibration level of 5g is to be used for the Vibration Test.

(6) If a Computational Investigation is conducted, λ_p shall not be greater than 6 failures/10^6 hours for the entire system. For external entrapment protection devices that are sold separately, λ_p shall not be greater than 0 failures/10^6 hours. The Operational Test is to be conducted for 14 days.

(7) If the Demonstrated Method test is conducted, the multiplier is to be based on the continuous usage level, and a minimum of 24 units for a minimum of 24 hours per unit are to be tested.

(8) The Endurance test is to be conducted concurrently with the Operational test. The control shall perform its intended function while being conditioned for fourteen days in an ambient air temperature of 60° C (140° F), or 10° C (18° F) greater than the operating temperature of the control, whichever is higher. During the test, the control is to be operated in a manner representing the opening and closing of the door at a rate of one open-close operation per minute.

(b) In the evaluation of entrapment protection circuits used in residential garage door operators, the critical condition flow chart shown in figure 1 shall be used:

(1) To conduct a failure-mode and effect analysis (FMEA);

(2) In investigating the performance during the Environmental Stress Tests; and

(3) During the Power Cycling Tests in accordance with the Standard for Tests for Safety-Related Controls Employing

Solid-State Devices, UL 991, 1st ed., dated July 19, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062–2096. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 5402 Westbard Avenue, Bethesda, Maryland or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 1211.6 General entrapment protection requirements.

(a) A residential garage door operator system shall be provided with inherent entrapment protection that complies with the requirements as specified in § 1211.7.

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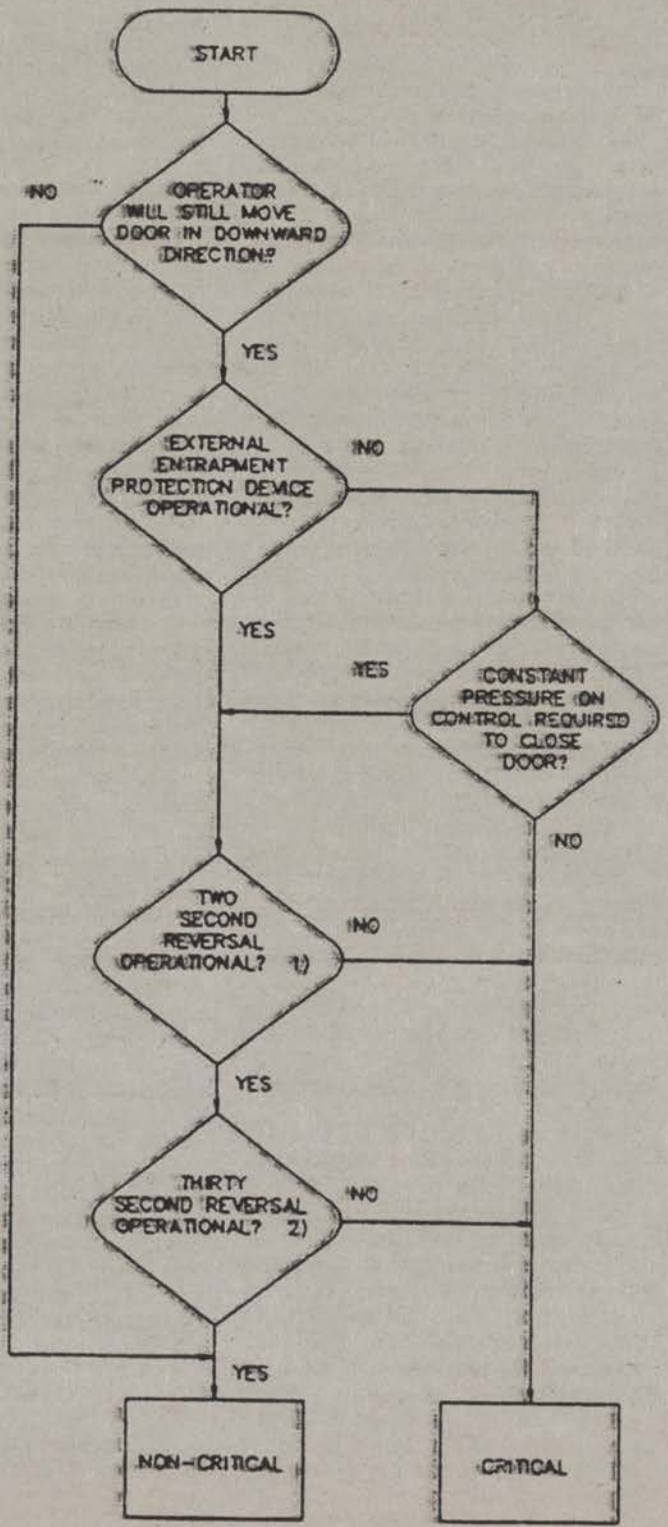
Figure 1

CRITICAL CONDITION FLOW CHART ENTRAPMENT PROTECTION DEVICES AND FUNCTIONS



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(b) In addition to the inherent entrapment protection as required by paragraph (a) of this section, a residential garage door operator shall comply with one of the following:

(1) Shall be constructed to:

(i) Require constant pressure on a control to lower the door,

(ii) Reverse direction and open the door to the upmost position if constant pressure on a control is removed prior to operator reaching its lower limit, and

(iii) Permit a portable transmitter, if provided, to only function to cause the operator to open the door.

(2) Shall be provided with a means for connection of an external entrapment protection device as described in §§ 1211.8, 1211.10, 1211.11, and 1211.12.

(c) A mechanical switch or a relay used in an entrapment protection circuit shall withstand 100,000 cycles of operation controlling a load no less severe (voltage, current, power factor, inrush, and the like) than it controls in the operator, and shall function normally upon completion of the test.

(d) If failure of a switch or relay (open or short) described in paragraph (c) of this section results in loss of any entrapment protection required by §§ 1211.7(a), 1211.7(f), or 1211.8(a), the door operator shall result in one of the following conditions:

(1) The door operator becoming inoperative by the end of the open or close operation, or

(2) The door moving to and staying within 1 foot (305 mm) of the uppermost position.

(e) During the closing cycle, the system providing compliance with § 1211.7(a) and 1211.7(f) shall function regardless of a short or open anywhere in the low-voltage external wiring to the control, external entrapment devices, or any other external component.

§ 1211.7 Inherent entrapment protection requirements.

(a) Except for the first 1 foot (305 mm) of travel as measured over the path of the moving door operating member, both with and without any external entrapment protection device functional, a downward moving residential garage door operator shall initiate reversal of the door within 2 seconds of contact with the obstruction as specified in paragraph (b) of this section. After reversing the door, the door operator shall return the door to and stop at the full upmost position, unless a control is actuated or an inherent entrapment circuit senses an obstruction to stop the door during its upward travel. Compliance with this paragraph shall be tested in accordance with paragraphs (b) through (g) of this section.

(b) For the tests described in paragraph (a) of this section, a solid object is to be placed on the floor of the test installation and at various heights under the edge of the door and located in line with the driving point of the operator. When tested on the floor, the object shall be 1 inch (25.4 mm) high. In the test installation, the bottom edge of the door under the driving force of the operator is to be against the floor when the door is fully closed.

(c) An operator is to be tested for compliance with paragraph (a) of this section for 50 open-and-close cycles of operation while the operator is connected to the type of residential garage door with which it is intended to be used or with the doors specified in paragraph (e) of this section. The force adjustment on the operator is to be at the maximum setting or at the setting that represents the most severe operating condition. Any accessories that could have an effect on the intended operation of entrapment protection functions that are intended for use with the operator, are to be attached and the test is to be repeated for one additional cycle.

(d) The operator is to be adjusted (limit and force) according to instructions provided with the operator. The operator is to be tested for 10 additional obstruction cycles using the solid object described in paragraph (b) of this section at these settings.

(e) If an operator is intended to be used with more than one type of door, one sample of the operator is to be tested on a sectional door with a curved track and one sample is to be tested on a one-piece door with jamb hardware and no track. If the Operator is not intended for use on either or both of these types of doors, a one-piece door with track hardware or a one-piece door with pivot hardware, as appropriate, may be used for the tests. See the marking requirements at § 1211.15 of this subpart.

(f) An operator shall initiate reversal of the door and shall return the door to and stop the door at the full upmost position, unless a control is actuated or an inherent entrapment protection circuit senses an obstruction to stop the door during its upward travel, if the lower limiting device is not actuated in 30 seconds or less following the initiation of the close cycle. If the door is stopped manually during its descent, the 30 seconds may be measured from the resumption of the close cycle.

(g) To determine whether an operator complies with the requirement in paragraph (f) of this section, an operator is to be subjected to 10 open-and-close cycles of operation while connected to the door or doors specified in paragraphs (c) and (e) of this section. The cycles of operation while connected to the door or doors need not be consecutive; that is, there may be any number of motor cooling-off periods during the test. The means provided to comply with the requirement in paragraph (a) of this section and § 1211.8(a) are to be inoperative or defeated during the test. An obstructing object is to be provided so that the door cannot activate a lower limiting device.

§ 1211.8 External entrapment protection requirements.

(a) An external entrapment protection device provided with or as an accessory to an operator shall consist of either:

(1) A photoeletric sensor that when activated causes an operator closing a door to reverse direction of the door and prevents an operator from closing an open door,

(2) An edge sensor installed on the edge of the door that when activated causes an operator closing a door to reverse direction of the door and prevents an operator from closing an open door, or

(3) Any other device that provides entrapment protection equivalent to paragraphs (a) (1) or (2) of this section.

(b) With respect to the device mentioned in paragraph (a) of this section, a door operator shall monitor for the presence and correct operation of the device, including the wiring to it, at least once during each close cycle. Should the device not be present or a fault condition occur which precludes the sensing of an obstruction, including an open or short circuit in the wiring that connects the external entrapment protection device to the operator and device's supply source, the operator shall function in one of the following conditions:

(1) A closing door shall open and an open door shall not close more than 1 foot (305 mm) below the upmost position, or

(2) The operator shall function as required by § 1211.6(b)(1).

(c) An external entrapment protection device as mentioned in paragraph (a) of this section shall comply with the applicable requirements specified in §§ 1211.10, 1211.11, and 1211.12 of this subpart.

§ 1211.9 Additional entrapment protection requirements.

(a) A means to manually detach the door operator from the door shall be provided. The means shall be colored red and shall be easily distinguishable

from the rest of the operator. It shall be capable of being adjusted to a height of 6 feet (1.8 m) above the garage floor when the operator is installed according to the instructions specified in § 1211.13(a)(2) of this subpart. The means shall be constructed so that a hand can firmly grip it and detach the operator by applying a maximum of 50 pounds (223 N) of force to the means with the door obstructed in the down position. The obstructing object, as described in § 1211.7(b), is to be located in several different positions. A marking with instructions for detaching the operator shall be provided as required by § 1211.14(i).

(b) Actuation of a control that initiates movement of a door shall stop and may reverse the door on the down cycle. On the up cycle, actuation of a control shall stop the door but not reverse it.

(c) An operator shall be constructed so that adjustment of limit, force or other user controls and connection of external entrapment protection devices can be accomplished without exposing normally enclosed live parts or wiring.

§ 1211.10 Requirements for all entrapment protection devices.

(a) *General requirements.* (1) An external entrapment protection device shall perform its intended function when tested in accordance with paragraphs (a)(2) through (4) of this section.

(2) The device is to be installed in the intended manner and its terminals connected to circuits of the door operator as indicated by the installation instructions.

(3) The device is to be installed and tested at minimum heights and widths representative of recommended ranges specified in the installation instructions. If not specified, devices are to be tested on a minimum 7 foot (2.1 m) wide door and maximum 20 foot (6.1 m) wide door.

(4) If powered by a separate source of power, the power-input supply terminals are to be connected to supply circuits of rated voltage and frequency.

(5) An external entrapment protection device requiring alignment, such as a photoelectric sensor, shall be provided with a means, such as a visual indicator, to show proper alignment and operation of the device.

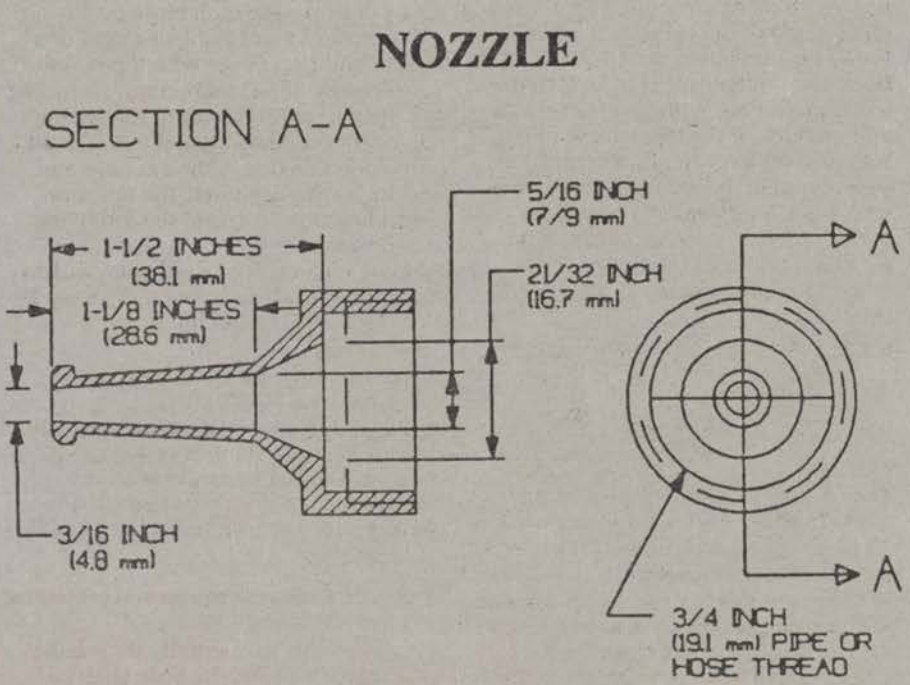
(b) *Current protection test.* (1) There shall be no damage to the entrapment protection circuitry if low voltage field-wiring terminals or leads are shortened or miswired to adjacent terminals.

(2) To determine compliance with paragraph (b)(1) of this section, an external entrapment protection device is to be connected to a door operator or other source of power in the intended manner, after which all connections to low voltage terminals or leads are to be reversed as pairs, reversed individually, or connected to any low voltage lead or adjacent terminal.

(c) *Splash test.* (1) An external entrapment protection device intended to be installed inside a garage 3 feet or less above the floor shall withstand a water exposure as described in paragraph (c)(2) of this section without resulting in a risk of electric shock and shall function as intended. After exposure, the external surface of the device may be dried before determining its functionality.

(2) An external entrapment protection device is to be indirectly sprayed using a hose having the free end fitted with a nozzle as illustrated in figure 2 and connected to a water supply capable of maintaining a flow rate of 5 gallons (19 liters) per minute as measured at the outlet orifice of the nozzle. The water from the hose is to be played, from all sides and at any angle against the floor under the device in such a manner most likely to cause water to splash the enclosure of electric components. However, the nozzle is not to be brought closer than 10 feet (3.05 m) horizontally to the device. The water is to be sprayed for 1 minute.

Figure 2



(d) *Ultraviolet light exposure test.* A polymeric material used as a functional part of a device that is exposed to outdoor weather conditions shall comply with the Ultraviolet Light Exposure Test described in the Standard for Polymeric Materials—Use in Electrical Equipment Evaluations, UL 746C, 3rd ed., dated July 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Ill. 60062–2096. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, D.C.

(e) *Resistance to impact test.* (1) An external entrapment protection device employing a polymeric or elastomeric material as a functional part shall be subjected to the impact test specified in paragraph (e)(2) of this section. After being subjected to this test:

(i) There shall be no cracking or breaking of the part, and

(ii) The part shall operate as intended.

(2) Samples of the external entrapment protection device are to be subjected to the Impact Test described in the Standard for Polymeric Materials—Use in Electrical Equipment Evaluations, UL 746C, 3rd ed., dated July 1, 1991, as incorporated by reference in paragraph (d) of this section. The external entrapment protection device is to be subjected to 5 foot-pound (6.8 J) impacts. Three samples are to be tested, each sample being subjected to three impacts at different points.

(3) Each of three additional samples of a device exposed to outdoor weather when the door is the closed position are to be cooled to a temperature of minus 31.0 ± 3.6° F (minus 35.0 ± 2.0° C) and maintained at this temperature for 3 hours. Three samples of a device employed inside the garage are to be cooled to a temperature of 32.0° F (0.0° C) and maintained at this temperature for 3 hours. While the sample is still cold, the samples are to be subjected to the impact test described in paragraph (e)(1) of this section.

§ 1211.11 Requirements for photoelectric sensors.

(a) *Normal operation test.* (1) When installed as described in § 1211.10(a)(1)–(4), a photoelectric sensor shall sense an obstruction as described in paragraph (a)(2) of this section that is to be placed on the floor at three points over the width of the door opening, at distances of 1 foot (305 mm) from each end and the midpoint.

(2) The obstruction noted in paragraph (a)(1) of this section shall consist of a white vertical surface 6 inches (152 mm) high by 12 inches (305 mm) long. The obstruction is to be centered under the door perpendicular to the plane of the door when in the closed position. See figure 3.

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Figure 3

STATIONARY OBSTRUCTION

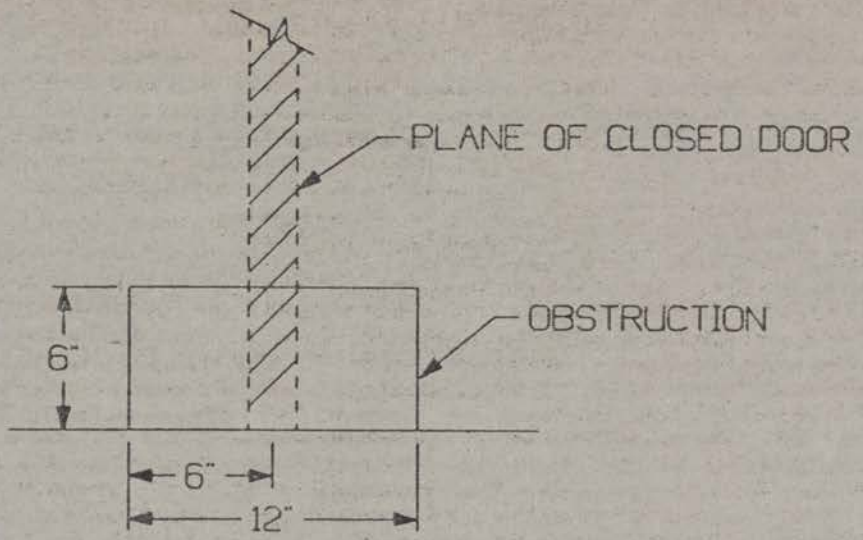
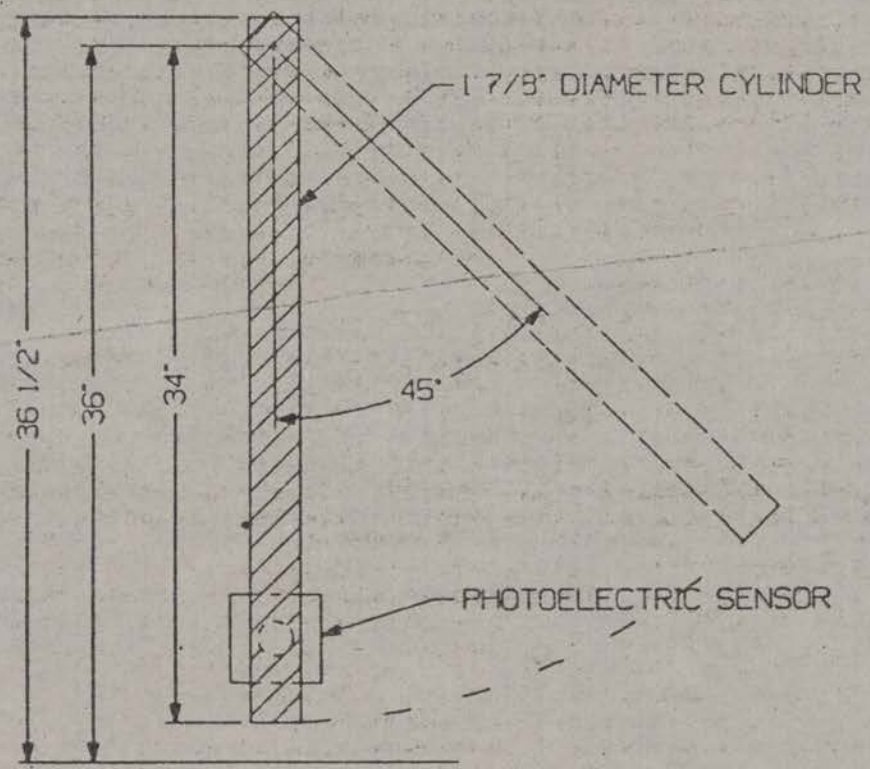


Figure 4

MOVING OBSTRUCTION



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(b) *Sensitivity test.* (1) When installed as described in § 1211.10(a)(1)–(4), a photoelectric sensor shall sense the presence of a moving object when tested according to paragraph (b)(2) of this section.

(2) The moving object is to consist of a 1⅞ inch (47.6 mm) diameter cylindrical rod, 34½ inches (876 mm) long, with the axis point being 34 inches (864 mm) from the end. The axis point is to be fixed at a point centered directly above the beam of the photoelectric sensor 36 inches (914 mm) above the floor. The photoelectric sensor is to be mounted at the highest position as recommended by the manufacturer. The rod is to be swung as a pendulum through the photoelectric sensor's beam from a position 45 degrees from the plane of the door when in the closed position. See figure 4.

(3) The test described in paragraph (b)(2) of this section is to be conducted at three points over the width of the door opening, at distances of 1 foot (305 mm) from each end and the midpoint.

(c) *Ambient light test.* (1) A photoelectric sensor shall operate as specified in § 1211.8 (a) and (b) when subjected to ambient light impinging at an angle of 15 to 20 degrees from the axis of the beam when tested according to paragraph (c)(2) and, if appropriate, paragraph (c)(3) of this section.

(2) To determine compliance with paragraph (c)(1) of this section, a 500 watt, 3600K Photo Floodlamp, type DXC RFL–2, is to be energized from a 120-volt, 60-hertz source.

BILLING CODE 6355-01-M

Figure 5

AMBIENT LIGHT TEST

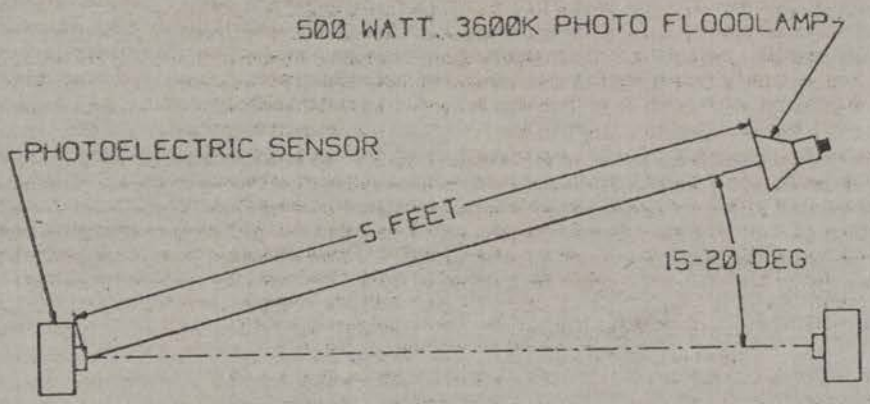
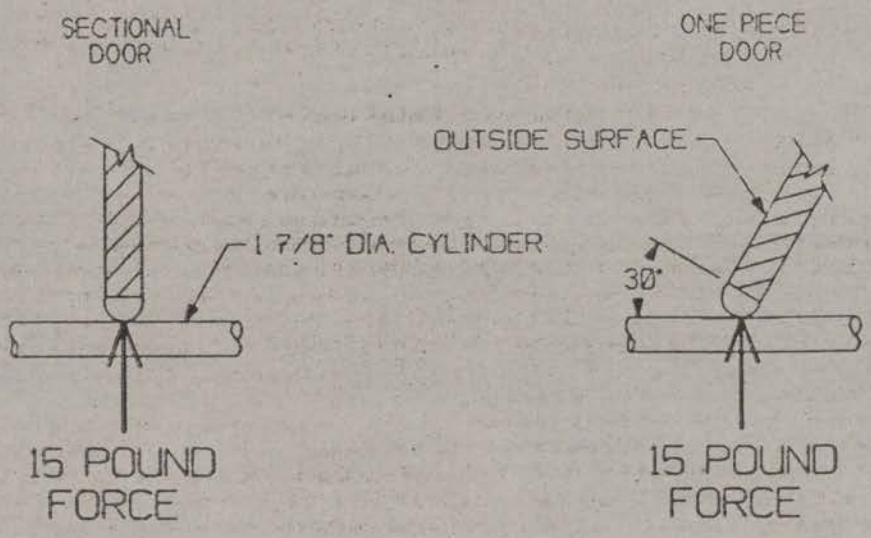


Figure 6

EDGE SENSOR NORMAL OPERATION TEST



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The lamp is to be positioned 5 feet from the front of the receiver and aimed directly at the sensor at an angle of 15 to 20 degrees from the axis of the beam. See figure 5.

(3) If the photoelectric sensor uses a reflector, this test is to be repeated with the lamp aimed at the reflector.

§ 1211.12 Requirements for edge sensors.

(a) *Normal operation test.* (1) When installed on a representative door edge, an edge sensor shall actuate upon the application of a 15 pounds (66.7 N) or less force in the direction of the application. For an edge sensor intended to be used on a sectional door, the force is to be applied by the longitudinal edge of a 1⅞ inch (47.6 mm) diameter cylinder placed across the switch so that the axis is perpendicular to the plane of the door. For an edge sensor intended to be used on a one piece door, the force is to be applied so that the axis is at an angle 30 degrees from the direction perpendicular to the plane of the door. See figure 6.

(2) With respect to the test of paragraph (a)(1) of this section, the test is to be repeated at various representative points of the edge sensor across the width of the door.

(3) Exception: The edge sensor need not be sensitive to actuation two inches (50.4 mm) or less from each end of the intended width of the door opening.

(b) *Endurance test.* An edge sensor system and associated components shall withstand 30,000 cycles of mechanical operation without failure. For this test, the edge sensor is to be cycled by the repetitive application of the force as described in paragraph (a)(1) of this section. The force is to be applied to the same location for the entire test. For an edge sensor system employing integral electric contact strips, this test shall be conducted with the contacts connected to a load no less severe than it controls in the operator. For the last 50 cycles of operation, the sensor shall function as intended when connected to an operator.

(c) *Elastomeric material conditioning test.* (1) An elastomeric material used as a functional part of an edge sensor shall function as intended when subjected to:

(i) Accelerated Aging Test of Gaskets, stated in paragraph (c)(3) of this section, and

(ii) Puncture Resistance Test, stated in paragraph (d) of this section.

(2) An elastomeric material used for a functional part that is exposed to outdoor weather conditions when the door is in the closed position shall have physical properties as specified in Table 1 after being conditioned in accordance with the Ultraviolet Light Exposure Test described in the Standard for Polymeric Materials—Use in Electrical Equipment Evaluations, UL 746C, 3rd ed., dated July 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062–2096.

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Table 1

PHYSICAL PROPERTIES OF GASKET-ACCELERATED AGING TEST

	Before Accelerated Aging	After Accelerated Aging
Recovery -- Maximum set when 2-inch (50.8-mm) gauge marks are stretched to 5 inches (127 mm), held for 2 minutes, and measured 2 minutes after release	1/2 inch (12.7 mm)	
Elongation -- Minimum increase in distance between 2-inch gauge marks at break	250 percent [2 to 7 inches (50.8—178.8 mm)]	65 percent of original
Tensile Strength -- Minimum force at breaking point	850 pounds per square inch (59 mPa)	75 percent of original

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Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(3) Rubber compounds forming gaskets that are depended upon for protection from rain shall have physical properties as specified in Table 1, before and after conditioning for 168 hours in an air-circulating oven at 70° C (158° F).

(d) *Puncture resistance test.* (1) After being subjected to the test described in paragraph (d)(2) of this section, an elastomeric material that is a functional part of an edge sensor shall:

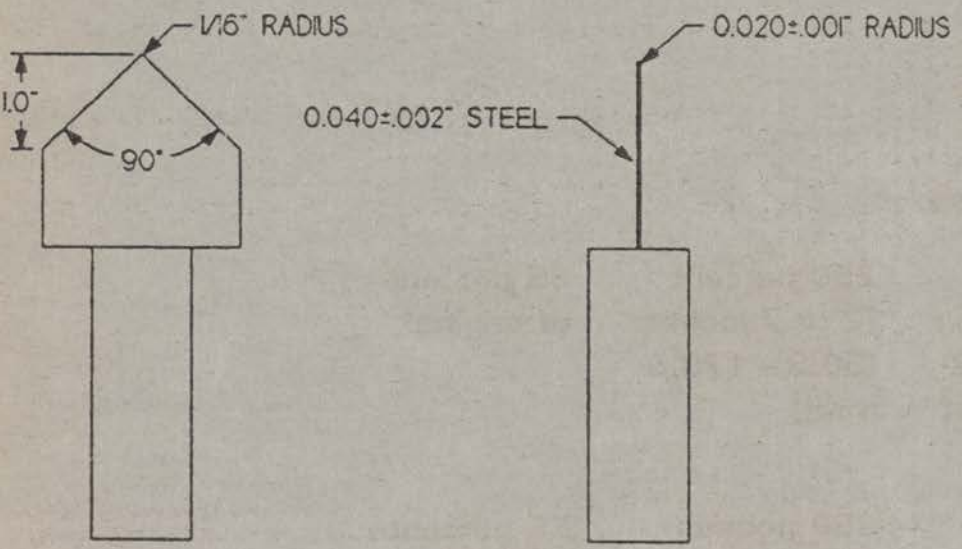
(i) Not be damaged in a manner that would adversely affect the intended operation of the edge sensor, and

(ii) Maintain enclosure integrity if it serves to reduce the likelihood of contamination of electrical contacts.

(2) A sample of the edge sensor is to be installed in the intended manner on a representative door edge. The probe described in figure 7 is to be applied with a 20 pound-force (89N) to any point on the sensor that is 3 inches or less above the floor is to be applied in the direction specified in the Edge Sensor Normal Operation Test, figure 6. The test is to be repeated on three locations on each surface of the sensor being tested.

Figure 7

PUNCTURE PROBE



§ 1211.13 Instruction manual.

(a) *General.* (1) A residential garage door operator shall be provided with an instruction manual. The instruction manual shall give complete instructions for the installation, operation, and user maintenance of the operator.

(2) Instructions that clearly detail installation and adjustment procedures required to effect proper operation of the safety means provided shall be provided with each door operator.

(3) A residential garage door or door operator shall be provided with complete and specific instructions for the correct adjustment of the control mechanism and the need for periodic checking and, if needed, adjustment of the control mechanism so as to maintain satisfactory operation of the door.

(4) The instruction manual shall include the important instructions specified in paragraphs (b)(1) and (2) of this section. All required text shall be legible and contrast with the background. Upper case letters of required text shall be no less that 5/64 inch (2.0 mm) high and lower case letters shall be no less than 1/16 inch (1.6 mm) high. Heading such as "Important Installation Instructions," Important Safety Instructions," "Save These Instructions" and the words "Warning—To reduce the risk of severe injury or death to persons": shall be in letters no less than 3/16 inch (4.8 mm) high.

(5) The instructions listed in paragraphs 1211.13(b)(1) and (2) shall be in the exact words specified or shall be in equally definitive terminology to those specified. No substitutes shall be used for the word "Warning." The items may be numbered. The first and last items specified in paragraph (b)(2) of this section shall be first and last respectively. Other important and precautionary items considered appropriate by the manufacturer may be inserted.

(6) The instructions listed in paragraph (b) (1) of this section shall be located immediately prior to the installation instructions. The instructions listed in paragraph (b) (2) of this section shall be located immediately prior to user operation and maintenance instructions. In each case, the instructions shall be separate in format from other detailed instructions related to installation, operation and maintenance of the operator. All instructions, except installation

instructions, shall be a permanent part of the manual(s).

(b) *Specific required instructions.* (1) The Installation Instructions shall include the following instructions:

Important Installation Instructions

Warning—To reduce the risk of severe injury or death:

1. Read and follow all Installation Instructions.
2. Install only a properly balanced garage door. An improperly balanced door could cause severe injury. Have a qualified service person make repairs to cables, spring assemblies and other hardware before installing opener.
3. Remove all ropes and remove or make inoperative all locks connected to the garage door before installing opener.
4. If possible, install door opener 7 feet or more above the floor. Mount the emergency release 6 feet above the floor.
5. Do not connect opener to source of power until instructed to do so.
6. Locate control button: (a) within sight of door, (b) at a minimum height of 5 feet so small children cannot reach it, and (c) away from all moving parts of the door.
7. Install Entrapment Warning Label next to the control button in a prominent location. Install the Emergency Release Marking. Attach the marking on or next to the emergency release.
8. After installing opener, the door must reverse when it contacts a 1½ inch high object (or a 2 by 4 board laid flat) on the floor.

(2) The User Instructions shall include the following instructions:

Important Safety Instructions

Warning—To reduce the risk of severe injury or death:

1. Read and Follow all Instructions.
2. Never let children operate, or play with door controls. Keep the remote control away from children.
3. Always keep the moving door in sight and away from people and objects until it is completely closed. No One Should Cross the Path of the Moving Door.
4. Test door opener monthly. The garage door MUST reverse on contact with a 1 inch object (or a 2 by 4 board laid flat) on the floor. After adjusting either the force or the limit of travel, retest the door opener. Failure to adjust the opener properly may cause severe injury or death.
5. If possible, use the emergency release only when the door is closed. Use caution when using this release with the door open. Weak or broken springs may allow the door to fall rapidly, causing injury or death.
6. Keep Garage Doors Properly Balanced. See owner's manual. An improperly balanced door could cause severe injury or death. Have a qualified service person make repairs to cables, spring assemblies and other hardware.
7. Save These Instructions.

§ 1211.14 Field-installed labels.

(a) A residential garage door operator shall be provided with labels for field installation and constructed as specified in paragraphs (c) through (i) of this section. The labels shall be acceptable for permanent installation. The instruction manual shall specify where the labels are to be located.

(b) If labels secured by adhesive are used, the instruction shall specify that an additional mechanical means shall be used to secure the labels to surfaces to which the adhesive will not adhere.

(c) A residential garage door operator shall be provided with a cautionary label intended for permanent installation to identify the possible risk of entrapment. The instruction manual shall direct that the label be affixed near the wall-mounted control button.

(d) The label required in accordance with paragraph (c) of this section shall be in a vertical layout with three panels:

(1) A signal word panel,

(2) A pictorial panel, and

(3) A message panel, with adjacent panels delineated from each other by a horizontal black line. The entire label shall be surrounded by a black border and shall measure at least 5 inches (127 mm) wide by 6¼ inches (159 mm) long overall.

(e) The signal word panel as specified in paragraph (d) of this section shall contain the word "WARNING," in uppercase letters, preceded by a safety alert symbol consisting of an orange exclamation mark on a black solid equilateral triangle background with the point of the triangle oriented upward. The word "WARNING" and the safety alert symbol shall be centered on one line and shall be in black letters at least 7/16 inch (11.1 mm) high on an orange background.

(f) The pictorial panel as specified in paragraph (d) of this section shall be positioned between the signal word panel and the message panel. The pictorial shall be black on a white background and shall clearly depict a child running toward or under a garage door. A red prohibition symbol (slash, oriented from the upper left to the lower right, through a circle) shall be superimposed over, and totally surround, the pictorial. The pictorial shall have an overall diameter of 1-7⅛ inch (47.6 mm) minimum.

(g) The message panel as specified in paragraph (d) of this section shall include the following text or an equivalent wording:

(1) Possible Risk and Consequence Statement—"A child may become trapped under an automatic garage door resulting in severe injury or death."

(2) Avoidance Statements—

(i) "Do not allow children to walk or run under a closing door."

(ii) "Do not allow children to operate door operator controls."

(iii) "Always keep a closing door within sight."

(iv) "If a person is trapped under the door, push the control button or use the emergency release."

(3) Instructions—

(i) "Test Door Operator Monthly: Use a 1½ inch thick object placed on the floor under the closing door. If the door does not reverse upon contact, adjust, repair, or replace the operator."

(ii) Additional instructions on not removing or painting over the label, mounting the label adjacent to the wall control, and mounting the wall control out of children's reach shall be provided. These additional instruction shall be in less prominent lettering than those in paragraph (g)(3)(i) of this section.

(h) The lettering of the message panel described in paragraph (g) of this section shall be black on a white background and shall be sans serif letters in combinations of upper case and lower case letters. The upper case letters of the Possible Risk and Consequence Statements and Avoidance Statements shall be ⅛ inch (3.18 mm) high minimum. The lettering of the Possible Risk and Consequence Statement shall be in italics, underlined, bold, or the like, and shall be double spaced from the Avoidance Statements. All other instructions shall be in letters less prominent than the Possible Risk and Consequence Statements and shall be separated with at least a single space between individual instructions.

(i) A residential garage door operator shall be provided with a cautionary marking attached to or adjacent at all times to the means provided to detach the operator from the garage door. The marking shall include the following statement or the equivalent: "If the door becomes obstructed, detach door from operator as follows: (The method to detach the operator shall be shown on the marking.)"

§ 1211.15 UL marking requirements.

(a) Unless specifically excepted, marking required in this standard shall be permanent. Ink-printed and stenciled markings, decalcomania labels, and pressure sensitive labels are among the types of marking that are considered acceptable if they are acceptably applied and are of good quality.

(b) Except as provided below, a garage door operator shall be plainly marked, at a location where the marking will be readily visible—after installation, in the case of a permanently connected appliance—with:

(1) The manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified—hereinafter referred to as the manufacturer's name;

(2) The catalog number or the equivalent;

(3) The voltage, frequency, and input in amperes or watts; and

(4) The date or other dating period of manufacture not exceeding any three consecutive months.

(c) The ampere rating shall be included unless the full-load power factor is 80 percent or more, or, for a cord-connected operator, unless the rating is 50 watts or less. The number of phases shall be indicated if an operator is for use on a polyphase circuit. The date code repetition cycle shall not be less than 20 years.

(d) Exception No. 1: The manufacturer's identification may be in a traceable code if the operator is identified by the brand or trademark owned by a private labeler.

(e) Exception No. 2: The date of manufacture may be abbreviated or in an established or otherwise accepted code.

(f) If a manufacturer produces or assembles operators at more than one factory, each finished operator shall have a distinctive marking, which may be in code, to identify it as the product of a particular factory.

(g) The carton and the instruction manual for an operator shall be marked with the word "WARNING" and the following or the equivalent: "To reduce the risk of injury to persons—Use this operator only with (a) _____door(s)."

(h) A residential garage door operator shall be marked with the word "WARNING" and the following or equivalent, "Risk of entrapment. After adjusting either the force or limits of travel adjustments, insure that the door reverses on a 1½ inch (or a 2 by 4 board laid flat) high obstruction on the floor."

(i) A separately supplied accessory, including external entrapment protection device, intended for installation with an appliance or appliances shall be marked with the manufacturer's name and catalog or model number and the type of appliance or appliances with which it is intended to be used—such as a residential garage door operator. Additionally, installation instructions, accompanying specifications sheet, or packaging of the accessory shall identify the appliance or appliances with which it is intended to be used by specifying the manufacturer's name and catalog or model number or by any other positive means to serve the identification purpose.

(j) An appliance provided with terminals or connectors for connection of a separately supplied accessory, such as an external entrapment protection device, shall be marked to identify the accessory intended to be connected to the terminals or connectors. The accessory identification shall be by manufacturer's name and catalog or model number or other means to allow for the identification of accessories intended for use with the appliance.

(k) With reference to paragraph (k) of this section, instructions for installing a separately supplied accessory shall be provided. A statement shall be included in the instructions warning the user that the appliance must be disconnected from the source of supply before attempting the installation of the accessory.

§ 1211.16 Statutory labeling requirement.

(a) A manufacturer selling or offering for sale in the United States an automatic residential garage door operator manufactured on or after January 1, 1991, shall clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of this part.

(b) The display of the UL logo or listing mark, and compliance with the date marking requirements of UL–325 now stated in § 1211.5 of this subpart, on both the container and the system, shall satisfy the requirements of this subpart.

3. Part 1211 is amended by adding new Subpart B, consisting of §§ 1211.20 through 1211.25, and new subpart C, consisting of §§ 1211.30 and 1211.31 to read as follows:

Subpart B—Certification

Sec.

Subpart C—Recordkeeping

Subpart B—Certification

§ 1211.20 Purpose, scope, and application.

(a) *Purpose.* Section 14(a) of the Consumer Product Safety Act, 15 U.S.C. 2063(a), requires every manufacturer (including importers) and private labeler of a product which is subject to a consumer product safety standard to issue a certificate that the product conforms to the applicable standard, and to base that certificate either on a test of each product or on a "reasonable testing program." The purpose of this subpart is to establish requirements that manufacturers and importers of automatic residential garage door operators subject to the Safety Standard for Automatic Residential Garage Door Operators (16 CFR Part 1211, Subpart A), shall issue certificates of compliance in the form specified.

(b) *Scope and application.* The provisions of this subpart apply to all residential garage door operators which are subject to the requirements of the Safety Standard for Automatic Residential Garage Door Operators that take effect on January 1, 1993 or later.

§ 1211.21 Effective date.

Under the Consumer Product Safety Act, automatic residential garage door operators must certify that they comply with requirements of subpart A of this part. This certification requirement is currently in effect. The specific labeling requirement of the certification rule in this subpart will become effective for any automatic residential garage door operator manufactured on or after January 21, 1993.

§ 1211.22 Definitions.

The following definitions shall apply to this subpart:

(a) *Private labeler* means an owner of a brand or trademark which is used on an operator subject to the standard and which is not the brand or trademark of the manufacturer of the operator, provided the owner of the brand or trademark caused or authorized the operator to be so labeled and the brand or trademark of the manufacturer of such operator does not appear on the label.

(b) *Production lot* means a quantity of garage door operators from which certain operators are selected for testing prior to certifying the lot. All garage door operators in a lot must be essentially identical in those design, construction, and material features which relate to the ability of an operator to comply with the standard.

(c) *Reasonable testing program* means any test or series of tests which are identical or equivalent to, or more stringent than, the tests defined in the standard and which are performed on one or more garage door operators of the production lot for the purpose of determining whether there is reasonable assurance that the operators in that lot comply with the requirements of the standard.

§ 1211.23 Certification testing.

(a) *General.* Manufacturers and importers shall either test each individual garage door operator (or have it tested) or shall rely upon a reasonable testing program to demonstrate compliance with the requirements of the standard.

(b) *Reasonable testing program.* This paragraph provides guidance for establishing a reasonable testing program.

(1) A reasonable testing program for automatic residential garage door operators is one that provides reasonable assurance that the operators comply with the standard. Manufacturers and importers may define their own testing programs. Such reasonable testing programs may, at the option of manufacturers and importers, be conducted by an independent third party qualified to perform such testing programs.

(2) To conduct a reasonable testing program, the garage door operators should be divided into production lots. Sample operators from each production lot should be tested in accordance with the reasonable testing program so that there is a reasonable assurance that if the operators selected for testing meet the standard, all operators in the lot will meet the standard. Where there is a change in parts, suppliers of parts, or production methods that could affect the ability of the operator to comply with the requirements of the standard, the manufacturer should establish a new production lot for testing.

(3) The Commission will test for compliance with the standard by using the test procedures contained in the standard. However, a manufacturer's reasonable testing program may include either tests prescribed in the standard or any other reasonable test procedures.

(4) If the reasonable testing program shows that an operator does not comply with one or more requirements of the standard, no operator in the production lot can be certified as complying until all non-complying operators in the lot have been identified and destroyed or altered by repair, redesign, or use of a different material or components to the extent necessary to make them conform to the standard. The sale or offering for sale of garage door operators that do not comply with the standard is a prohibited act and a violation of section 19(a) of the CPSA (15 U.S.C. 2068(a)), regardless of whether the operator has been validly certified.

§ 1211.24 Product certification and labeling by manufacturers.

(a) *Form of permanent label of certification.* Manufacturers (including importers) shall issue certificates of compliance for automatic residential garage door operators manufactured after the effective date of the standard in the form of a permanent label which can reasonable be expected to remain on the operator during the entire period the operator is capable of being used. Such labeling shall be deemed to be a "certificate" of compliance as that term is used in section 14 of the CPSA, 15 U.S.C. 2063.

(b) *Exception for UL listed operators.* The certification labeling requirement of paragraph (a) of this section shall be satisfied by display of the Underwriters Laboratories, Inc. (UL) logo or listing mark, and compliance with the date marking requirements of UL Standard for Safety 325, on both the operator system and its container. Operators displaying the UL logo or listing mark and complying with the UL standard are exempt from the requirements of paragraphs (c) and (d) of this section.

(c) *Contents of certification label.* The certification labels required by this section shall clearly and legibly contain the following information:

(1) The statement "Meets CPSC _____(insert 1993 or later date of applicable standard) garage door operator entrapment protection requirements."

(2) An identification of the production lot.

(d) *Placement of the label.* The label required by this section must be affixed to the operator. If the label is not immediately visible to the ultimate purchaser of the garage door operator prior to purchase because of packaging or other marketing practices, a second label that states: "Meets CPSC _____ (insert 1993 or later date of applicable standard) garage door operator entrapment protection requirements," along with the month or week and year of manufacture must appear on the container or, if the container is not visible, on the promotional material used with the sale of the operator.

§ 1211.25 Product certification and labeling by importers.

(a) *General.* The importer of any automatic residential garage door operator subject to the standard in subpart A of this part must issue the certificate of compliance required by section 14(a) of the CPSA and § 1211.24 of this subpart. If testing of each operator, or a reasonable testing program, meeting the requirements of this subpart has been performed by or for the foreign manufacturer of the product, the importer may rely in good faith on such tests to support the certificate of compliance provided the importer is a resident of the United States or has a resident agent in the United States and the records of such tests required by § 1211.31 of subpart C of this part are maintained in the United States.

(b) *Responsibility of importer.* If the importer relies on tests by the foreign manufacturer to support the certificate of compliance, the importer bears the responsibility for examining the records supplied by the manufacturer to determine that the records of such tests appear to comply with § 1211.31 of subpart C of this part.

Subpart C—Recordkeeping

§ 1211.30 Effective date.

The recordkeeping requirements in this subpart shall become effective on January 21, 1993, and shall apply to automatic residential garage door operators manufactured on or after that date.

§ 1211.31 Recordkeeping requirements.

(a) *General.* Every person issuing certificates of compliance for automatic residential garage door operators subject to the standard set forth in subpart A of this part shall maintain written records which show that the certificates are based on a test of each operator or on a reasonable testing program. The records shall be maintained for a period of at least three years from the date of certification of each operator or the last operator in each production lot. These records shall be available to any designated officer or employee of the Commission upon request in accordance with section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(b) *Content of records.* Records shall identify the operators tested and the production lot and describe the tests the operators were subjected to in sufficient detail so the tests may be replicated. Records shall also provide the results of the tests including the precise nature of any failures, and specific actions taken to address any failures.

(c) *Format for records.* The records required to be maintained by this section may be in any appropriate form or format that clearly provides the required information.

Dated: December 10, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–30529 Filed 12–18–92; 8:45 am]

BILLING CODE 6355–01–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Amendments to Administrative Manual—Rules of Practice and Procedure

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its December 9, 1992 business meeting, the Delaware River Basin Commission amended its Administrative Manual—Rules of Practice and Procedure relating to water quality standards and policies to protect existing water quality in certain waters of the Basin.

By the same action, the Commission amended its Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Part III Water Quality Regulations. Supplementary background information and a summary of the amendments to the Comprehensive Plan, Water Code and Water Quality Regulations are published elsewhere in this issue of the **Federal Register.** Those amendments set forth an overall framework for providing special water quality protection measures in waters deemed by the Commission to have exceptionally high scenic, recreational, ecological and/or water supply values. The amendments also classify specific stream reaches as Special Protection Waters.

The amendments to the Rules of Practice and Procedure revise certain point source pollution control policies and requirements. They reduce the threshold for point source discharges deemed not to have a substantial effect on the water resources of the Basin and not required to be submitted to the Commission under section 3.8 of the Compact from a daily average rate of 50,000 gallons to 10,000 gallons in the drainage area to Special Protection Waters:

EFFECTIVE DATE: December 9, 1992.

ADDRESSES: Copies of the Commission's Administrative Manual—Rules of Practice and Procedure are available from the Delaware River Basin Commission, P.O. Box 7360, West, Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500 X203.

SUPPLEMENTARY INFORMATION: The Commission held public hearings on the proposed amendments on May 5, 1992; May 6, 1992 and May 15, 1992 as noticed in the March 18, 1992 and April 15, 1992 issues of the **Federal Register** (Vol. 57, No. 53 and Vol. 57, No. 73). Based upon testimony received and considerable deliberation, the Commission has amended its Administrative Manual—Rules of Practice and Procedure.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

18 CFR part 401 is amended as follows:

SUBCHAPTER A—ADMINISTRATIVE MANUAL

PART 401—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 401 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. Section 401.35(a) (4) and (5) are revised to read as follows:

§ 401.35 Classification of projects for review under section 3.8 of the Compact.

(a) * * *

(4) The construction of new municipal sewage treatment facilities or alteration or addition to existing municipal sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems.

(5) The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials.

* * * * *

Delaware River Basin Compact, 75 Stat. 688.

Dated: December 14, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92–30855 Filed 12–18–92; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket Nos. 88G–0428 and 91G–0268]

Direct Food Substances Affirmed as Generally Recognized as Safe; Urease Enzyme Derived From Lactobacillus Fermentum

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm as generally recognized as safe (GRAS) the use of urease enzyme preparation derived from *Lactobacillus fermentum* in the alcoholic beverage wine. This action is in response to two petitions filed by Takeda Chemical Industries, Ltd., 12–10 Nihonbashi, 2-Chome, Chuo-ku, Tokyo 103, Japan.

DATES: Effective January 21, 1993. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in new § 184.1924(b), effective January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Vincent Zenger, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35), Takeda Chemical Industries, Ltd., 12–10 Nihonbashi, 2-Chome, Chuo-ku, Tokyo 103, Japan, submitted two petitions (GRASP 8G0342 and GRASP 0G0358) requesting that the urease enzyme preparation derived from *Lactobacillus fermentum* be affirmed as GRAS for use in the alcoholic beverages sake and wine, respectively, to prevent the formation of ethyl carbamate.

To avoid confusion between urease, the enzyme, and urease, the enzyme preparation (in which urease is the principal active component, but which also contains other components derived from the production organism or the fermentation media), this document will use the term "urease" to refer to the former and "urease enzyme preparation" to refer to the latter.

FDA published a notice of filing of GRASP 8G0342 in the **Federal Register** of January 26, 1989 (54 FR 3854) and gave interested parties an opportunity to

submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. (The docket number for this notice has been changed from 88F–0428 to 88G–0428.) FDA received no comments in response to that notice.

FDA published a notice of filing of GRASP 0G0358 in the **Federal Register** of July 31, 1991 (56 FR 36162) and interested persons were given until September 30, 1991, to submit comments. FDA received seven comments in response to that notice. All seven comments, from members of the wine industry and academia, supported the action requested in the petition. All comments stated that urease added to wine has been shown to reduce the concentration of urea, which is a precursor to ethyl carbamate.

The term "wine" as defined by the Bureau of Alcohol, Tobacco, and Firearms in 27 CFR 2.5 and 4.10 includes alcoholic beverages made in the manner of wine from agricultural products other than grapes and containing not less than 7 percent and not more than 24 percent alcohol by volume. This definition includes the alcoholic beverage sake (Ref. 1). Therefore, the agency has concluded that affirmation as GRAS of the use of the urease enzyme preparation from *L. fermentum* in wine, as defined in 27 CFR 2.5 and 4.10, would be responsive to both petitions. In addition, in this document, references to the use of urease enzyme preparation in wine include the use of urease enzyme preparation in sake.

II. Standards for Gras Affirmation

Pursuant to § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of food substances. The basis of such views may be either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, through experience based on common use in food (§ 170.30(a)). General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive, but ordinarily is to be based upon generally available data and information concerning the pre-1958 history of use of the food ingredient (§ 170.30(c)(1)).

In its petitions, Takeda Chemical Industries, Ltd., relies on scientific procedures, primarily published scientific papers and books, to demonstrate the safety and identity of the urease enzyme preparation and the production strain from which it was derived. Takeda Chemical Industries, Ltd., provided published and unpublished information documenting that urease derived from nontoxicogenic, nonpathogenic *L. fermentum* is safe and suitable for use in preventing the formation of ethyl carbamate in wine.

In evaluating these petitions, the agency reviewed information concerning: (1) The safety of the production organism, (2) the safety of the urease enzyme preparation, (3) the production and purification of the urease enzyme preparation, (4) the natural occurrence or presence of the *L. fermentum* organism in many foods, and (5) the residual levels of the urease enzyme preparation in wine.

III. Identity, Specifications, and Technical Effect

Urease is the accepted name for the enzyme that facilitates the hydrolysis of urea to ammonia and carbon dioxide. It is a metalloenzyme containing nickel (Refs. 2 and 3). Urease produced from *L. fermentum* is optimally active at acidic pH and belongs to a group of ureases collectively called "acid ureases." (Ref. 4) According to the Nomenclature Committee of the International Union of Biochemistry, urease has the following designation: Urease, E.C. 3.5.1.5. (Ref. 5). The Chemical Abstracts Service (CAS) Registry Number for urease is 9002–13–5. The agency finds that the petitioned preparation meets the general and additional requirements for enzyme preparations found in the "Food Chemicals Codex," 3d ed. (1981), which is incorporated by reference in new § 184.1924(b).

The function of urease in wine is to prevent the formation of ethyl carbamate. Ethyl carbamate is known to be mutagenic and carcinogenic in experimental animals (Ref. 6). Urea, a natural byproduct of fermentation, is believed to be the major precursor of ethyl carbamate in alcoholic beverages, including wine (Refs. 7 and 8). Urease facilitates the hydrolysis of urea found in wine to ammonia and carbon dioxide. The petitioner presented published information that the urease enzyme preparation performs its intended technical effect in wine (Refs. 7 and 9 through 17).

IV. Production and Purification of Urease Preparation

The petitioner presented evidence that the production organism satisfies the definition for *L. fermentum* in "Bergey's Manual of Systematic Bacteriology" (Ref. 18). The production process for urease enzyme preparation from *L. fermentum* is described in GRASP 8G0342 (the sake petition) and is summarized below.

A pure culture of *L. fermentum* is aseptically grown in fermenters in a medium containing dextrose, casein digest, meat extract, yeast extract, sodium chloride, sodium acetate, and manganese sulfate. The fermentation is conducted statically at 36 to 38 °C without aeration because the strain is a facultative anaerobe. Cell growth is monitored by measuring the optical density at 590 nanometers. The culture is periodically checked microscopically for the presence of foreign microorganisms. After 36 to 48 hours, the culture broth is circulated through a ceramic filter. The concentrated cell suspension is washed with water, and again concentrated to approximately 1/30 of the original volume. If necessary, the cells are disrupted by hyper-homogenization. Food-grade ethyl alcohol is then added to the slurry to make its concentration 50 percent by volume. The slurry is mixed for several hours to assure that all cells are killed. The ethyl alcohol is then evaporated under vacuum, and the suspension is dried to powder either by spray drying or lyophilization. The enzyme preparation consists of killed whole cells of the *L. fermentum* organism containing the urease enzyme.

V. Safety Information

Takeda Chemical Industries, Ltd., provided published information demonstrating that *L. fermentum*, the urease-producing organism, is commonly found in many kinds of foods such as dairy products (including yogurt), sour-dough, sausages, and pickled vegetables (Refs. 18 through 22). For example, in "dosa" a fermented food indigenous to India, *L. fermentum* is one of the predominant bacteria responsible for souring and leavening of the batter (Ref. 19). *L. fermentum* has also been isolated from malt whiskey distillery fermentations (Ref. 20). *Lactobacillus* species (including *L. fermentum*) also have a long history of use in meat (Ref. 21) and are the subject of a prior sanction by the United States Department of Agriculture (Ref. 22). Consumers of these products have been

exposed to cells of *L. fermentum* and accompanying urease for many years, with no reports of adverse effects.

The petitions also contain published information that shows that the microorganism, *L. fermentum*, is a normal inhabitant of the gastrointestinal tract of humans (Ref. 23) as well as rats (Ref. 4). The petitioner has also provided published evidence that the source organism is not a pathogenic microbe for humans (Ref. 24). "Bergey's Manual of Systematic Bacteriology," which describes the pathogenicity of the *Lactobacillus* species, contains no reference to pathogenicity of *L. fermentum* (Ref. 18). In addition, in its sake petition, Takeda Chemical Industries, Ltd., submitted a search of the literature from 1977 to 1987 made via TOXLINE, a computer data base of toxicological references produced by the National Library of Medicine, for references to *L. fermentum* and pathogenicity, pathogen formation, toxicology, toxins, and disease or infection. The search did not identify a single report that *L. fermentum* is the etiological agent of a disease in man or animals. The sake petition also contains the results of a manual literature search for references to the pathogenicity of *L. fermentum* in Chemical Abstracts from 1947 to 1981. No references to pathogenicity of *L. fermentum* were found in that search.

Further, the petitioner provided unpublished, corroborative studies of the safety of the organism and urease enzyme preparation. In one study, viable cells of *L. fermentum* were administered at maximum dosage levels (250×10^8 cells/kilogram (kg)) to male mice and rats; the study showed that the production organism is nonpathogenic.

In addition, a 4-week subacute oral toxicity study of crude urease powder (2,000 milligrams (mg)/kg body weight) was performed in rats. Gross and microscopic pathological examination revealed no adverse effects from treatment with the urease powder preparation. The petitioner also provided a bacterial mutagenicity study on crude acid urease powder and in vivo tests of mutagenicity of crude acid urease powder with *Drosophila* somatic systems. There was no evidence of mutagenicity of the urease enzyme preparation in any of these studies. Finally, it is generally considered that no *Lactobacillus* species produces antibiotic substances (Ref. 18). Tests for antibiotic activity of the culture broth of *L. fermentum* were negative.

VI. Proposed Use in Food and Exposure Estimate

The amounts of urease enzyme preparation used will vary based on the catalytic activity of the enzyme in any one batch of enzyme preparation. Estimates of enzyme use level and intake are usually based on the Total Organic Solids (TOS) content of the enzyme preparation (Ref. 25). Urease derived from *L. fermentum* is proposed for use as an inhibitor of ethyl carbamate formation in wine at a maximum use level of 88 mg, expressed as TOS per liter of wine. According to information presented in the petitions, wine treated with the urease enzyme preparation is filtered prior to final packaging. The filtration process removes most of the urease enzyme preparation and other proteinaceous material from the wine. Based on current information on wine consumption and on the maximum proposed use level of the urease preparation in wine, the estimated daily intake (EDI) of urease preparation from *L. fermentum* expressed as TOS at the 90th percentile is 20 mg/person/day. This is equivalent to 0.3 mg TOS/kg body weight/day for a 60 kg person. (For comparison, the 90th percentile EDI for the TOS of *Lactobacillus*, including *L. fermentum*, from yogurt consumption is 490 mg/person/day equivalent to 8 mg/kg body weight/day).

Moreover, based on data obtained in the corroborative 4-week rat feeding study, which showed no adverse effects of treatment with 200 mg/kg body weight of urease enzyme preparation (the highest dose tested), the acceptable daily intake (ADI) of urease TOS from *L. fermentum* is 2 mg/kg body weight/day. This is well above the 90th percentile EDI from wine consumption of 0.3 mg/kg body weight/day.

VII. Conclusions

The agency has evaluated the information in the petitions along with other available information and finds that urease enzyme preparation from *L. fermentum* is effective for reducing levels of urea, a precursor of the animal carcinogen ethyl carbamate, in the alcoholic beverage wine. The agency concludes, based on the evaluation of published information, corroborated by unpublished data and information, that the use of the urease enzyme preparation from *L. fermentum* in wine is GRAS. Therefore, the agency is affirming that the use of urease enzyme preparation from *L. fermentum* in wine, as defined in 27 CFR 2.5 and 4.10, is GRAS under current good manufacturing practice conditions (§ 184.1(b)(1)). However, the agency is specifying the technical effect and the food use in wine in the regulation to make clear that the affirmation of the GRAS status of this material is based on the evaluation of this limited use.

VIII. Environmental Effects

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's findings of no significant impact and the evidence supporting these findings, contained in environmental assessments, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IX. Economic Effects

FDA has examined the economic implications of the final rule affirming the GRAS status of urease enzyme derived from *L. fermentum* for use in wine, as required by Executive Orders 12291 on Federal regulations, Executive Order 12612 on federalism, and the Regulatory Flexibility Act. The agency finds that this final rule is not a major rule as defined by Executive Order 12291. Since no current activity is prohibited by this final rule, the compliance cost to firms is zero. Because no increase in the health risks faced by consumers will result from this final rule, total costs are also zero. Potential benefits include the wider use of this enzyme because of reduced uncertainty concerning its GRAS status, and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of this enzyme for this use. FDA finds that there is no substantial federalism issue which would require an analysis under Executive Order 12612. Finally, in accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has also determined that this final rule will not have a significant adverse impact on a substantial number of small businesses.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. 27 CFR 2.5 and 4.10.

2. Hausinger, R. P., "Nickel Utilization by Microorganisms," *Microbiological Reviews*, pp. 22–42, March, 1987.

3. GRASP 8G0342, Table G–2, Vol. 1, p. 36.

4. "Method for Producing Acid Urease, and Use Thereof," Inventor: Kobashi, K., T.

Kobayashi, K. Kusai, S. Takebe, S. Honda, H. Mishima. Assignee: Nagase and Co., Ltd.; European Patent Application: EP 0 280 398 A2., August 31, 1988.

5. "Enzyme Nomenclature 1984," Academic Press, Inc., Orlando, FL, 1984, pp. 366–367.

6. International Agency for Research on Cancer, "Monographs on the Evaluation of Cancer Risks of Chemicals to Man," Vol. 7: 111–140, 1974.

7. Ough, C. S., E. A. Crowell, and L. A. Mooney, "Formation of Ethyl Carbamate Precursors During Grape Juice (Chardonnay) Fermentation. I. Addition of Amino Acids, Urea, and Ammonia: Effects of Fortification on Intracellular and Extracellular Precursors," *American Journal of Enology and Viticulture*, 39(3):243–249, 1988.

8. Tegmo-Larsson, I. M. and T. Henick-Kling, "Ethyl Carbamate Precursors in Grape Juice and the Efficiency of Acid Urease on their Removal," *American Journal of Enology and Viticulture*, 41(3):189–192, 1990.

9. Ough, C. S. and G. Trioli, "Urea Removal from Wine by an Acid Urease," *American Journal of Enology and Viticulture*, 39(4):303–307, 1988.

10. Fujinawa, S., H. Todoroki, N. Ohashi, J. Toda, M. Terasaki, "Application of an Acid Urease to Wine: Determination of Trace Urea in Wine," *Journal of Food Science*, 55(4):1018–1022 and 1038, 1990.

11. Fujinawa, S., G. Burns, and P. De La Teja, "Application of Acid Urease to Reduction of Urea in Commercial Wines," *American Journal of Enology and Viticulture*, 41(4):350–354, 1990.

12. Famuyiwa, O. O. and C. S. Ough, "Modification of Acid Urease by Fluoride Ions and Malic Acid in Wine," *American Journal of Enology and Viticulture*, 42(1):79–80, 1991.

13. "Acid Urease Preparations for Alcoholic Beverages," Inventor: Fujinawa, S., S. Kodama, H. Iisuka, H. Yada. Applicant: Takeda Chemical Industries, Ltd.; European Patent Application: EP 0 366 564 A1, May 16, 1990.

14. "Quality Improvement of Alcoholic Liquors," Inventor: Kakimoto, S., Y. Sumino, H. Yamada, I. Mayasu, E. Ichikawa, T. Suizu. Applicant: Takeda Chemical Industries, Ltd.; European Patent Application: EP 0 266 088 A1., May 4, 1988.

15. Trioli, G. and C. S. Ough, "Causes for Inhibition of an Acid Urease from *Lactobacillus fermentus*," *American Journal of Enology and Viticulture*, 40(4):245–252, 1989.

16. Kodama, S., T. Suzuki, S. Fujinawa, P. Del La Teja, and F. Yotsuzuka, "Prevention of Ethyl Carbamate Formation in Wine by Urea Degradation Using Acid Urease," in *Proceedings of the International Symposium on Nitrogen in Grapes and Wine*, pp. 270–273, 1991.

17. "Quality Improvement of Alcoholic Liquors," Inventor: S. Kakimoto, et al., Assignees: Takeda Chemical Industries, Ltd., and Gekkeiken Sake Co., Ltd.; U.S. Patent No. 4,844,911; July 4, 1989.

18. "Bergey's Manual of Systematic Bacteriology," Vol. 2., P. H. A. Sneath, editor, Williams and Wilkins, pp. 1208–1234, Baltimore, 1984.

19. Soni, S. K., D. K. Sandhu, K. S. Vilkhu, and N. Kamra, "Microbiological Studies on *Dosa* Fermentation," *Food Microbiology*, 3:45–53, 1986.

20. Makanjuola, D. B. and D. G. Springham, "Identification of Lactic Acid Bacteria Isolated from Different Stages of Malt Whiskey Distillery Fermentations," *Journal of the Institute of Brewing*, 90:13–19, 1984.

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22. 9 CFR 318.7.

23. Suzuki, K., Y. Benno, T. Mitsuoka, S. Takebe, K. Kobashi, and J. Hase, "Urease-Producing Species of Intestinal Anaerobes and Their Activities," *Applied and Environmental Microbiology*, 37(3):379–382, March, 1979.

24. Kunkee, R. E., "Malo-lactic Fermentation," *Advances in Applied Microbiology*, 9:235–246, 1967.

25. "The 1978 Enzyme Survey Summarized Data," National Research Council/National Academy of Sciences, U.S. Department of Commerce, National Technical Information Service PB81–216697, Washington DC, pp. i-iii, 1981.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 184.1924 is added to read as follows:

§ 184.1924 Urease enzyme preparation from Lactobacillus fermentum.

(a) This enzyme preparation is derived from the nonpathogenic, nontoxicogenic bacterium *Lactobacillus fermentum*. It contains the enzyme urease (CAS Reg. No. 9002–13–5), which facilitates the hydrolysis of urea to ammonia and carbon dioxide. It is produced by a pure culture fermentation process and by using materials that are generally recognized as safe (GRAS) or are food additives that have been approved for this use by the Food and Drug Administration (FDA).

(b) The ingredient meets the general and additional requirements for enzyme preparations in the "Food Chemicals Codex," 3d ed. (1981), pp. 107–110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as GRAS as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used in wine, as defined in 27 CFR 2.5 and 4.10, as an enzyme as defined in § 170.3(o)(9) of this chapter to convert urea to ammonia and carbon dioxide.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. Current good manufacturing practice is limited to use of this ingredient in wine to inhibit formation of ethyl carbamate.

Dated: December 7, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–30805 Filed 12–18–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8437]

RIN 1545–AP56

Limitations on Percentage Depletion in the Case of Oil and Gas Wells; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8437), which were published Wednesday, September 23, 1992, (57 FR 43897). The amendments to final regulations clarify the circumstances under which percentage depletion is available in the case of oil and gas wells.

EFFECTIVE DATE: September 23, 1992.

FOR FURTHER INFORMATION CONTACT: Brenda M. Stewart, 202–622–3120 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections clarify the circumstances under which percentage depletion is available in the case of oil and gas wells under section 613A.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8437), which was the subject of FR Doc. 92–23097, is corrected as follows:

Paragraph 1. On page 43897, columns 1 and 2, the portion of the preamble, entitled "Paperwork Reduction Act" is corrected to read as follows:

Paperwork Reduction Act

The collection of information requirement contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1251. The estimated burden per recordkeeper varies from 1 minute to 3 minutes, depending on individual circumstances, with an estimated average of 2 minutes.

These estimates are an approximation of the average time expected to be necessary to collect information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require more time or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Par. 2. On page 43899, column 1, in the preamble under the heading "Special Analyses", line 10, the language "regulations, and, therefore, an initial" is corrected to read "regulations, and, therefore a final".

Par. 3. On page 43901, column 3, in § 1.613A–3, paragraph (e)(7), *Example 1*, line 3, the language "1990, the partnership acquired a producing" is corrected to "1992, the partnership acquired a producing".

Par. 4. On page 43901, column 3, in § 1.613A–3, paragraph (e)(7), *Example 3*, line 2, the language "*Example 1* with the exception that in 1990 C" is corrected to read "*Example 1* with the exception that in 1992 C".

Par. 5. On page 43902, column 1, in § 1.613a–3, paragraph (e)(7), *Example 5*, line 1, the language "*Example 5*. On January 1, 1993, G has an" is corrected to read "*Example 5*. On January 1, 1990, G has an".

Par. 6. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 5*, line 5, the language "1993 G sells G's partnership interest to I for" is corrected to read "1990 G sells G's partnership interest to I for".

Par. 7. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 6*, line 3, the language "property. On January 1, 1993, the" is corrected to read "property. On January 1, 1990, the".

Par. 8. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 6*, line 5, the language "was zero. On January 1, 1993, L is admitted as" is corrected to read "was zero. On January 1, 1990, L is admitted as".

Par. 9. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 7*, line 3, the language "1993, the partnership acquired an unproven" is corrected to read "1991, the partnership acquired an unproven".

Par. 10. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 7*, line 9, the language "partnership capital. For the 1993 taxable year," is corrected to read "partnership capital. For the 1991 taxable year,".

Par. 11. On page 43902, column 1, in § 1.613–A, paragraph (e)(7), *Example 7*, line 12, the language "Accordingly, at the end of the 1993 taxable" is corrected to read "Accordingly, at the end of the 1991 taxable".

Par. 12. On page 43902, column 1, in § 1.613A–3, paragraph (e)(7), *Example 6*, line 15, the language "$75x. On January 1, 1994, Q is admitted as an" is corrected to read "$75x. On January 1, 1992, Q is admitted as an".

Par 13. On page 43903, column 1, in § 1.613A–3, paragraph (h)(2)(v), *Example 5*, line 13, the language "allocated to E under the DE partnership" is corrected to read "allocated to D under the DE partnership".

Par. 14. On page 43903, column 1, in § 1.613A–3, paragraph (h)(2)(v), *Example 6*, line 4, the language "Under § 1.613–7(n)(4), the contribution is not" is corrected to read "Under § 1.613A–7(n)(4), the contribution is not".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–30809 Filed 12–18–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1 and 602

[T.D. 8454]

RIN 1545–AP58

Adjusted Current Earnings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the alternative minimum tax (AMT) for corporations. The Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989 and the Revenue Reconciliation Act of 1990 all made changes to the applicable law. These regulations affect corporate taxpayers and provide them with guidance necessary to determine their alternative minimum tax.

DATES: These regulations are effective for taxable years beginning after December 31, 1989. However, the paragraphs relating to the LIFO recapture adjustment, § 1.56(g)–1(f)(3), are effective for taxable years beginning after December 18, 1992, although a taxpayer may choose to apply that paragraph for all taxable years beginning after December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bogos of the Office of the Assistant Chief Counsel (Income Tax and Accounting) (202) 622–4960 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1233. The estimated annual burden per respondent varies from one-half hour to one and one-half hours, depending on individual circumstances, with an estimated average of one hour. These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based upon such information as is available to the

Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:P, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 56 of the Internal Revenue Code of 1986 (Code). The amendments will conform the regulations to section 701 of the Tax Reform Act of 1986 (Pub. L. 99–514; 100 Stat. 2320), sections 1007 and 6079 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3342), sections 7205 and 7611 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106), and sections 11301 and 11531 of the Revenue Reconciliation Act of 1990 (Pub. L. 101–508).

On March 15, 1991, the Internal Revenue Service published in the **Federal Register** a Notice of Proposed Rulemaking (56 FR 11122) regarding the computation of adjusted current earnings (ACE). The Service received four written comments. No public hearing was requested and none was held. The amendments to the regulations contained in this document are adopted after consideration of the written comments.

Comments on Proposed Regulations

A. LIFO Recapture Adjustment: § 1.56(g)–1(f)(3)

Section 56(g)(4)(D)(iii) of the Code requires taxpayers to compute adjusted current earnings (ACE) with the adjustments in section 312(n)(4). Section 312(n)(4) requires taxpayers to increase or decrease their earnings and profits by the increase or decrease in their LIFO (last-in, first-out) reserve during the taxable year.

The proposed regulations provide that ACE is increased or decreased by the increase or decrease in the LIFO recapture amount as of the close of the taxable year. The proposed regulations also provide that ACE is not decreased to the extent of any decrease in the LIFO recapture amount below the baseline LIFO recapture amount. Further, increases in the LIFO recapture amount will increase ACE only to the extent of any increase above the baseline LIFO recapture amount. The baseline LIFO recapture amount is defined in the proposed regulations as the excess, if any, of the taxpayer's beginning FIFO inventory amount for the first taxable year beginning after December 31, 1989, over the taxpayer's beginning LIFO inventory amount for the first taxable year beginning after December 31, 1989.

Commentators asked whether a taxpayer with more than one category of LIFO inventory computes a single LIFO recapture amount or a separate LIFO recapture amount for each grouping or pool of LIFO inventory. If each grouping or pool had its own LIFO recapture amount, the proposed regulations' baseline LIFO recapture limitation could result in a positive ACE adjustment for a taxpayer that experienced a $100 increase in one pool's LIFO recapture amount in the same year that another pool's LIFO recapture amount decreased by $200. The final regulations clarify that a taxpayer (*i.e.*, a corporation) computes a single LIFO recapture amount for all of its assets that are accounted for under LIFO.

Commentators also suggested that: (1) A partner in a partnership that uses LIFO should be permitted to include its share of any change in the partnership's LIFO recapture amount in its LIFO recapture adjustment, and (2) corporations that file a consolidated return should be permitted to compute a single LIFO recapture adjustment for the consolidated group. Implementing these suggestions without eliminating the proposed regulations' baseline LIFO recapture limitation, however, would be unduly complex.

Therefore, for purposes of computing ACE, the final regulations do not limit the LIFO recapture adjustment by the baseline LIFO recapture amount. Thus, the full amount of any increase or decrease in the LIFO recapture amount will increase or decrease the taxpayer's ACE for the taxable year regardless of whether the increase or decrease is below the taxpayer's beginning LIFO recapture amount for the first taxable year beginning after December 31, 1989. This change significantly simplifies the computation of the ACE LIFO recapture adjustment.

The removal of the baseline LIFO recapture limitation also allows a consolidated group to net all changes in its members' LIFO recapture amounts in determining the group's ACE LIFO recapture adjustment. Thus, increases or decreases in a member's LIFO recapture amount below that member's beginning LIFO recapture amount for the first taxable year beginning after December 31, 1989, are taken into account in determining the group's LIFO recapture adjustment. This treatment furthers the single entity view of the consolidated group by treating the group the same as a single corporation with several divisions or multiple groupings or pools of LIFO inventory. Similarly, a corporate partner takes into account its proportionate share of the partnership's LIFO inventory assets for the partnership taxable year that ends within or with the corporation's taxable year.

Some commentators requested that the final regulations provide guidance on the ACE LIFO recapture implications of a transfer of LIFO inventory in an exchange qualifying under section 351 or section 721. For example, they expressed concern that in the absence of further regulatory guidance, a new company formed in a section 351 transaction would potentially experience a large and unwarranted ACE LIFO recapture adjustment due solely to the interaction of that adjustment with the rules governing exchanges under section 351. In response to these comments, the final regulations provide a special adjustment, only for purposes of computing ACE, to the LIFO recapture adjustments of both the transferor and the transferee in the case of an exchange under section 351 or 721.

These changes to paragraph (f)(3) of § 1.56(g)–1 from the proposed regulations are effective for taxable years beginning after December 18, 1992. However, a taxpayer may choose to apply the final regulations for all taxable years beginning after December 31, 1989.

One commentator was concerned about the interaction of transfers of LIFO inventory subject to the deferred intercompany transaction rules of § 1.1502–13 with the ACE LIFO adjustment. Issues relating to these transfers arise only in the context of consolidated groups and are not addressed in these final regulations. The Service expects to address the treatment of deferred intercompany transactions in forthcoming proposed regulations on the AMT and consolidated groups.

B. Election to Use Regular Tax Inventories for Alternative Minimum Tax: § 1.56(g)–1(r)

Section 1.56 (g)–1(r) of the proposed regulations provides that taxpayers may elect to use their regular tax inventory amounts to compute pre-adjustment alternative minimum taxable income ("AMIT") and ACE, including the ACE

LIFO adjustment of § 1.56(g)–1(f)(3). The election eliminates the need to compute separate inventory amounts for pre-adjustment AMTI and ACE. Taxpayers making the election, however, determine each adjustment under sections 56 and 58 and each tax preference item under section 57 without reduction for that portion of the adjustment or preference that would have been capitalized in inventory but for the election.

Some commentators questioned whether only LIFO taxpayers could make the election under § 1.56(g)–1(r). The final regulations make it clear that the election is available to any taxpayer that properly follows the procedures required to make the election.

Some commentators were unsure about which taxpayers could make a prospective election, and which could make only a retroactive election. The final regulations clarify that taxpayers that have computed their AMT and ACE inventories for all prior taxable years using the elective method may make a prospective election. Additionally, taxpayers that have not used the elective method to compute their AMT and ACE inventories, if any, in prior taxable years may make a prospective election if their tax liability in all open prior taxable years would not have changed had the elective method been used in all prior taxable years. The regulations require all other taxpayers who wish to make the election to make a retroactive election.

One commentator suggested that the Service allow taxpayers to elect to use pre-adjustment AMTI inventories for ACE (while using regular tax inventories only for regular tax). The commentator argued that taxpayers that have already set up accounting systems to compute their pre-adjustment AMTI inventories should not be required to use their regular tax inventories for AMT purposes in order to avoid having to compute ACE inventories. The final regulations thus provide an election to use pre-adjustment AMTI inventories for ACE, using rules similar to those for electing to use regular tax inventories for pre-adjustment AMTI and ACE. Taxpayers who make this election will continue to use regular tax inventories for regular tax purposes only.

Finally, one commentator thought that taxpayers subject to the Coordinated Examination Program (CEP) should be allowed to make retroactive elections without amending their prior year returns for open years. While the Service appreciates the unique scope of CEP examinations, the Service feels that all taxpayers under examination should be able to make the simplified inventory election in the same manner. The final regulations therefore include procedures for taxpayers to follow if their return for any year for which they want to make the simplified inventory election is under examination and they otherwise would be required to file amended returns to make the election. In all cases, however, it is the taxpayer's responsibility to make a timely election, either by filing an amended return or by proposing an examination adjustment.

C. Adjustment for Alternative Tax Energy Preference Deduction: § 1.56(g)–1(s)

Section 1.56(g)–1(s) of the proposed regulations provides taxpayers with guidance on adjustments they must make for ACE if the taxpayer claims a deduction under section 56(h) (the alternative tax energy preference deduction). The proposed regulations require taxpayers to adjust basis by the portion of the deduction allowed under section 56(h) that is attributable to adjustments under section 56(g)(4). The purpose of the basis adjustment is to ensure that no double benefit is allowed by reason of the section 56(h) deduction. Commentators expressed concern that any precise method of adjusting basis would be complex and difficult to administer.

On October 24, 1992, the President signed H.R. 776 (Pub. L. 102–486), which repealed section 56(h) effective for taxable years beginning after December 31, 1992. Thus, the deduction under section 56(h) is allowed only for taxable years beginning after December 31, 1990, and before January 1, 1993. Because of the short time period for which section 56(h) is effective, § 1.56(g)–1(s) of the proposed regulations is being finalized without change.

D. Other Matters

A clarification has been made to § 1.56(g)–1(d)(2)(ii)(B) of the regulations to conform the example at the end of the text to the rule provided in the regulation.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nicholas G. Bogos of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. Other personnel from the Service and the Treasury, however, assisted in developing these regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.56–0 Through 1.58–9

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * * Section 1.56(g)–1 also issued under section 7611(g)(3) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2373) * * *

Par. 2. In section 1.56(g)–0, the entry for § 1.56(g)–1 is amended as follows:

1. Paragraphs (a)(7), (r) and (s) are added;
2. Paragraphs (f)(3) and (m) are revised;
3. The additions and revisions read as follows:

§ 1.56(g)–0 Table of contents.

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* * * * *

(f) Certain other earnings and profits adjustments.

* * * * *

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(A) In general.
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(iii) Taxpayers under examination.
(A) In general.
(*1*) Year of change under examination.
(*2*) Other open years under examination.
(B) Statement required.
(C) Year of change.
(D) Treatment of additional tax liability.
(iv) Election as method of accounting.
(v) Untimely election to use simplified inventory method.
(4) Example.
(5) Election to use alternative minimum tax inventories to compute adjusted current earnings.
(s) Adjustment for alternative tax energy preference deduction.
(1) In general.
(2) Example.

Par. 3. Section 1.56(g)–1 is amended as follows:

1. The text of paragraph (a)(6)(i) is revised.

2. Paragraph (a)(7) is added.

3. The text of paragraph (d)(2)(ii)(B) is revised.

4. The text of paragraphs (f)(3) and (m) are added.

5. Paragraphs (r) and (s) are added.

6. The additions and revisions read as follows:

§ 1.56(g)–1 Adjusted current earnings.

(a) * * *

(6) * * *

(i) * * * Pre-adjustment alternative minimum taxable income is the alternative minimum taxable income of the taxpayer for the taxable year, determined under section 55(b)(2), but without the adjustment for adjusted current earnings under section 56(g) and this section, without the alternative tax net operating loss deduction under section 56(a)(4), and without the alternative tax energy preference deduction under section 56(h).

* * * * *

(7) *Application to foreign corporations.* See paragraph (m) of this section for rules relating to the application of this section to foreign corporations.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(B) * * * For example, assume that a section 936 corporation earns $100 of income in its current taxable year, $10 of which is not eligible for the credit under section 936. If the section 936 corporation makes a distribution of $50 during that year, $5 of that distribution ($10 of income not eligible for the section 936 credit divided by $100 of income, times $50 distributed) is deemed to be attributable to earnings of the paying corporation that are subject to federal income tax.

* * * * *

(f) * * *

(3) *LIFO recapture adjustment*—(i) *In general.* Adjusted current earnings are generally increased or decreased by the increase or decrease in the taxpayer's LIFO recapture amount (as defined in paragraph (f)(3)(iii)(A) of this section) as of the close of each taxable year.

(ii) *Beginning LIFO and FIFO inventory.* For purposes of computing the increase or decrease in the LIFO recapture amount, the beginning LIFO and FIFO inventory amounts for the first taxable year beginning after December 31, 1989, are—

(A) The ending LIFO inventory amount used in computing pre-adjustment alternative minimum taxable income for the last year beginning before January 1, 1990; and

(B) The ending FIFO inventory amount for the last year beginning before January 1, 1990, computed with the adjustments described in section 56 (other than the adjustment described in section 56(g)) and section 58, the items of tax preference described in section 57 and using the methods used in computing pre-adjustment alternative minimum taxable income.

(iii) *Definitions*—(A) *LIFO recapture amount*—(*1*) *Definition.* The taxpayer's LIFO recapture amount is the excess, if any, of—

(*i*) the inventory amount of its assets under the FIFO method, computed using the rules of this section; over

(*ii*) the inventory amount of its assets under the LIFO method, computed using the rules of this section.

(*2*) *Assets included.* Only the assets for which the taxpayer uses the LIFO method to compute pre-adjustment alternative minimum taxable income are taken into account in determining the LIFO recapture amount.

(B) *FIFO Method.* For purposes of this paragraph, the LIFO method is the first in, first out method described in section 471, determined by using—

(*1*) The retail method if that is the method the taxpayer uses in computing pre-adjustment alternative minimum taxable income; or

(*2*) The lower of cost or market method for all other taxpayers.

(C) *LIFO method.* The LIFO method is the last in, first out method authorized by section 472.

(D) *Inventory amounts.* Except as otherwise provided, inventory amounts are computed using the methods used in computing pre-adjustment alternative minimum taxable income. To the extent inventory is treated as produced or acquired during taxable years beginning after December 31, 1989, the inventory amount is determined with the adjustments described in sections 56 and 58 and the items of tax preference described in section 57. Thus, for example, the amount of depreciation to be capitalized under section 263A with respect to inventory produced in taxable years beginning after December 31, 1989, is based on the depreciation allowed under the rules of paragraph (b) of this section. See paragraph (a)(5) of this section.

(iv) *Exchanges under sections 351 and 721.* For purposes of this section, any decrease in a transferor's LIFO recapture amount that occurs as a result of a transfer of inventories in an exchange to which section 351 or section 721 applies cannot be used to decrease the adjusted current earnings of the transferor. A decrease that is disallowed under the preceding sentence is instead carried over to reduce any LIFO recapture adjustment that the transferee (or its corporate partners, if section 721 applies) would otherwise make (in the absence of this paragraph (f)(3)(iv)) solely by reason of its carryover basis in inventories received in the section 351 or section 721 exchange. Nothing in this paragraph (f)(3)(iv), however, alters the computation of the LIFO recapture amount of the transferor or transferee as of the close of any taxable year.

(v) *Examples.* The following examples illustrate the provisions of this paragraph (f)(3).

Example 1. M Corporation, a calendar-year taxpayer, uses the LIFO method of accounting for its inventory for purposes of computing pre-adjustment alternative minimum taxable income. M's ending LIFO inventory for all of its pools for purposes of

computing pre-adjustment alternative minimum taxable income on December 31, 1989, is $300. M computes a $500 FIFO inventory amount on that date, after applying the provisions of section 263A along with the adjustments and preferences required in computing pre-adjustment alternative minimum taxable income. M's FIFO and LIFO ending inventory amounts at the close of its taxable years, its LIFO reserves, and its adjustment under this paragraph (f)(3), are as follows:

	1989	1990	1991	1992
Ending Inventory:				
A. FIFO	[1] $500	$360	$560	$600
B. LIFO	[2] 300	180	320	440
LIFO recapture amount:				
A–B	200	180	240	160
Change in LIFO recapture amount and adjustment under paragraph (f)(3)	.....	(20)	60	(80)

[1] Beginning FIFO inventory amount under paragraph (f)(3)(ii).
[2] Beginning LIFO inventory amount under paragraph (f)(3)(ii).

Example 2. (A) X Corporation, a calendar-year taxpayer, uses the LIFO method for purposes of computing pre-adjustment alternative minimum taxable income. X's LIFO recapture amount is $300 as of December 31, 1992, and is $200 as of December 31, 1993. Immediately prior to calculating its LIFO recapture amount as of December 31, 1993, X transfers inventory with an adjusted current earnings (ACE) basis of $500 to Y Corporation in an exchange to which section 351 applies. X determines that the $100 decrease in its LIFO recapture amount occurred as a result of its transfer of inventories to Y in the section 351 exchange. Thus, under paragraph (f)(3)(iv) of this section, X cannot decrease its adjusted current earnings by that amount. In computing its 1994 LIFO recapture adjustment, X will use $200 as its LIFO recapture amount as of December 31, 1993, even though it was not entitled to reduce adjusted current earnings by the $100 decrease in its LIFO recapture amount in 1993.

(B) For purposes of computing its ACE, Y takes a $500 carryover basis in the inventories received from X. If Y, a newly formed calendar-year taxpayer, engages in no other inventory transactions in 1993 and adopts the LIFO inventory method on its 1993 tax return, it will have a LIFO recapture amount of $0 as of December 31, 1993 (because its FIFO inventory amount and its LIFO inventory amount are both $500). Assume that at December 31, 1994, Y has a LIFO recapture amount of $200 ($1,000 FIFO inventory amount–$800 LIFO inventory amount). Under paragraph (f)(3)(i) of this section, Y computes a LIFO recapture adjustment for 1994 of $200 ($200–$0). If any portion of Y's $200 LIFO recapture adjustment occurs solely by reason of its carryover basis in the inventories it received from X, Y reduces its $200 LIFO recapture adjustment by that portion under paragraph (f)(3)(iv). In any event, however, Y will use its $200 LIFO recapture amount as of December 31, 1994, in computing its 1995 LIFO recapture adjustment.

(vi) *Effective date.* Paragraph (f)(3) is effective for taxable years beginning after December 18, 1992. A taxpayer may choose to apply this paragraph, however, to all taxable years beginning after December 31, 1989.

* * * * *

(m) *Adjusted current earnings of a foreign corporation*—(1) *In general.* The alternative minimum taxable income of a foreign corporation is increased by 75 percent of the excess of—

(i) Its effectively connected adjusted current earnings for the taxable year; over

(ii) Its effectively connected pre-adjustment alternative minimum taxable income for the taxable year.

(2) *Definitions*—(i) *Effectively connected pre-adjustment alternative minimum taxable income.* Effectively connected pre-adjustment alternative minimum taxable income is the effectively connected taxable income of the foreign corporation for the taxable year, determined with the adjustments under sections 56 and 58 (except for the adjustment for adjusted current earnings, the alternative tax net operating loss and the alternative tax energy preference deduction) and increased by the tax preference items of section 57, but taking into account only items of income of the foreign corporation that are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States, and any expense, loss or deduction that is properly allocated and apportioned to that income.

(ii) *Effectively connected adjusted current earnings.* Effectively connected adjusted current earnings is the effectively connected pre-adjustment alternative minimum taxable income of the foreign corporation for the taxable year, adjusted under section 56(g) and this section, but taking into account only items of income of the foreign corporation that are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States, and any expense, loss or deduction that is properly allocated and apportioned to that income.

(3) *Rules to determine effectively connected pre-adjustment alternative minimum taxable income and effectively connected adjusted current earnings.* The principles of section 864(c) (and the regulations thereunder) and any other applicable provision of the Internal Revenue Code apply to determine whether items of income of the foreign corporation are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States, and whether any expense, loss or deduction is properly allocated and apportioned to that income.

(4) *Certain exempt amounts.* Effectively connected adjusted current earnings and effectively connected pre-adjustment alternative minimum taxable income do not include any item of income, or any expense, loss or deduction that is properly allocated and apportioned to income that is exempt from United States taxation under section 883 or an applicable income tax treaty. See section 894.

* * * * *

(r) *Elections to use simplified inventory methods to compute alternative minimum tax*—(1) *In general.* If a taxpayer makes an election under this paragraph (r) (and does not make the election in paragraph (r)(5) of this section), the rules of paragraph (r)(2) of this section apply in computing the taxpayer's pre-adjustment alternative minimum taxable income and adjusted current earnings.

(2) *Effect of election*—(i) *Inventories.* The taxpayer's inventory amounts as determined for purposes of computing taxable income are used for purposes of computing pre-adjustment alternative minimum taxable income and adjusted current earnings. Subject to the further modification described in paragraph (r)(2)(ii) of this section, the taxpayer's cost of sales as determined for purposes of computing taxable income is also used for purposes of computing pre-adjustment alternative minimum taxable income and adjusted current earnings.

(ii) *Modifications required*—(A) *In general.* If a taxpayer makes an election under this paragraph (r), pre-adjustment alternative minimum taxable income and adjusted current earnings are computed with the modifications described in this paragraph. The items of adjustment under sections 56 and 58 and the items of tax preference under section 57 are computed without regard to the portion of those adjustments and preferences which, but for the election described in this paragraph, would have been capitalized in ending inventory. For example, pre-adjustment alternative minimum taxable income is increased by the excess of the depreciation allowable for the taxable year under section 168 for purposes of computing taxable income (determined without regard to section 263A) over the depreciation allowable for the taxable year under section 56(a)(1) and section 57 for purposes of computing pre-adjustment alternative minimum taxable income (determined without regard to section 263A). Similarly, adjusted current earnings is further increased by the excess of the depreciation allowable for the taxable year under section 56(a)(1) and section 57 for purposes of computing pre-adjustment alternative minimum taxable income (determined without regard to section 263A) over the depreciation allowable for the taxable year under section 56(g)(4)(A) for purposes of computing adjusted current earnings (determined without regard to section 263A). Thus, the modifications described in the preceding sentence do not duplicate amounts that are taken into account in computing pre-adjustment alternative minimum taxable income. See paragraph (a)(6)(ii) of this section.

(B) *Negative modifications allowed.* An election under this paragraph (r) does not affect the taxpayer's ability to make negative adjustments. Thus, if an election is made under this paragraph (r) and the amount of any adjustment under section 56 or 58, determined after modification under paragraph (r)(2)(ii)(A) of this section, is a negative amount, then this amount reduces pre-adjustment alternative minimum taxable income or adjusted current earnings. However, no negative adjustment under this paragraph (r)(2)(ii)(B) is allowed for the items of tax preference under section 57.

(iii) *LIFO recapture adjustment.* If a taxpayer makes an election under this paragraph (r) and uses the LIFO method for some assets, for purposes of computing the LIFO recapture adjustment under paragraph (f)(3) of this section for taxable years beginning after December 31, 1989—

(A) The LIFO inventory amount as determined for purposes of computing taxable income is used in lieu of the LIFO inventory amount as determined under paragraph (f)(3)(iii) of this section;

(B) The FIFO inventory amount is computed without regard to the adjustments under sections 56 (including the adjustments of section 56(g)(4)) and 58 and the items of tax preference of section 57; and

(C) The beginning LIFO and FIFO inventory amounts under paragraph (f)(3)(ii) of this section are the ending LIFO inventory amount as determined for purposes of computing taxable income and the ending FIFO inventory amount computed without regard to the adjustments under sections 56 (including the adjustments of sections 56(g)(4)) and 58 and the items of tax preference of section 57 for the last taxable year beginning before January 1, 1990.

(3) *Time and manner of making election*—(i) *Prospective election.* (A) A prospective election under this paragraph (r) may be made by any taxpayer—

(*1*) That has computed pre-adjustment alternative minimum taxable income and adjusted current earnings for all prior taxable years in accordance with the method described in this paragraph (r); or

(*2*) That has not computed pre-adjustment alternative minimum taxable income and adjusted current earnings for all prior tax years in accordance with the method described in this paragraph (r), but for which the use of the method described in this paragraph (r) for all prior taxable years would not have changed the taxpayer's tax liability (as shown on returns filed as of the date the election is made) for any prior taxable year for which the period of limitations under section 6501(a) has not expired (as of the date the election is made).

(B) A prospective election under this paragraph (r) may only be made by attaching a statement to the taxpayer's timely filed (including extensions) original Federal income tax return for any taxable year that is no later than its first taxable year to which this paragraph (r) applies and in which the taxpayer's tentative minimum tax (computed under the provisions of this paragraph (r)) exceeds its regular tax. However, in the case of a taxpayer described in paragraph (r)(3)(i)(A)(*1*) of this section that had tentative minimum tax in excess of its regular tax for any prior taxable year, the election may only be made by attaching a statement to its timely filed (including extensions) original Federal income tax return for the first taxable year ending after December 18, 1992. The statement must—

(*1*) Give the name, address and employer identification number of the taxpayer; and

(*2*) Identify the election as made under this paragraph (r).

(C) The determination of whether a taxpayer is described in paragraph (r)(3)(i)(A)(*2*) of this section is to be made as of the time the taxpayer makes a prospective election in accordance with the procedures in paragraph (r)(3)(i)(B) of this section.

(D) Any taxpayer described in paragraph (r)(3)(i)(A)(*2*) of this section that makes a prospective election will be deemed to have used the method described in this paragraph (r) in computing pre-adjustment alternative minimum taxable income and adjusted current earnings for all prior taxable years.

(ii) *Retroactive election*—(A) A retroactive election under this paragraph (r) may be made by any taxpayer not described in paragraph (r)(3)(i)(A) (*1*) or (*2*) of this section. Except as provided in paragraph (r)(3)(iii) of this section, a retroactive election may only be made by attaching a statement to the taxpayer's amended Federal income tax return for the earliest taxable year for which the period of limitations under section 6501(a) has not expired and which begins after December 31, 1986. The amended return to which the election under this paragraph (r)(3)(ii) is attached must be filed no later than June 21, 1993.

(B) The amended return must contain the statement described in paragraph (r)(3)(i)(B) of this section. In addition, the statement must contain a representation that the taxpayer will modify its pre-adjustment alternative minimum taxable income and adjusted current earnings for all open taxable years in accordance with paragraph (r)(2) of this section. Upon this change in method of accounting, the taxpayer must include the entire adjustment required under section 481(a), if any, in preadjustment alternative minimum taxable income and adjusted current earnings on the amended return for the year of the election. The taxpayer must also reflect the method of accounting described in paragraph (r)(2) of this section on amended returns filed for all taxable years after the year of the election for which returns were originally filed before making the election (and for which the period of limitations under section 6501(a) has not expired).

(C) Provided a taxpayer meets the requirements of this paragraph (r), any change in method of accounting arising as a result of making a retroactive election will be treated as made with the advance consent of the Commissioner.

(D) Any retroactive election under this paragraph (r) that is made without filing amended returns required under this paragraph (r)(3)(ii) shall constitute a change in method of accounting made without the consent of the Commissioner.

(iii) *Taxpayers under examination*—(A) *In general.* A taxpayer that wishes to make a retroactive election under section (r)(3)(ii) of this section may use the procedures in paragraph (r)(3)(iii)(A)(*1*) or (*2*) in lieu of filing an amended return for any taxable year that is under examination by the Internal Revenue Service.

(*1*) *Year of change under examination.* If the year of the change is under examination at the time the taxpayer timely makes the election, the taxpayer may (in lieu of filing an amended return for the year of the change) furnish the written statement described in paragraph (r)(3)(iii)(B) of this section to the revenue agent responsible for examining the taxpayer's return no later than June 21, 1993. It is the taxpayer's responsibility to make a timely election either by furnishing the statement to the revenue agent or by filing amended returns by June 21, 1993.

(*2*) *Other open years under examination.* If any other year for which the taxpayer must modify its pre-adjustment alternative minimum taxable income and adjusted current earnings (see paragraph (r)(3)(ii)(B) of this section) is examined, the taxpayer may (in lieu of filing an amended return) furnish the amount of the conforming adjustment to the revenue agent responsible for examining the taxpayer's return. It is the taxpayer's responsibility to timely modify its pre-adjustment alternative minimum taxable income and adjusted current earnings for each year other than the year of change, either by furnishing the amount of the adjustment to the revenue agent or by filing amended returns.

(B) *Statement required.* The statement required under paragraph (r)(3)(iii)(A)(*1*) of this section must include all of the items required under paragraph (r)(3)(ii)(B) of this section, as well as—

(*1*) The caption "Election to use regular tax inventories for AMT purposes;"

(*2*) A description of the nature and amount of all items that would result in adjustments and that the taxpayer would have reported if the taxpayer had used the method described in this paragraph (r) for all prior taxable years for which the period of limitations under section 6501(a) has not expired and which begin after December 31, 1986; and

(*3*) The following declaration signed by the person authorized to sign the return for the taxpayer: "Under penalties of perjury, I declare that I have examined this written statement, and to the best of my knowledge and belief this written statement is true, correct, and complete."

(C) *Year of change.* The year of change is the earliest taxable year for which the period of limitations under section 6501(a) has not expired at the time the statement is submitted to the appropriate revenue agent and that begins after December 31, 1986. Thus, the adjustments required to be included on the statement must include any adjustment under section 481(a) determined as if the method described in this paragraph (r) had been used in all taxable years prior to the year of change that begin after December 31, 1986.

(D) *Treatment of additional tax liability.* Any additional tax liability that results from the adjustments identified in the written statement described in paragraph (r)(3)(iii)(B) of this section is treated as an additional amount of tax shown on an amended return.

(iv) *Election as method of accounting.* The elections provided in paragraphs (r)(3) (i) and (ii) of this section constitute either adoptions of, or changes in, methods of accounting. These elections, once made, may be revoked only with the consent of the Commissioner in accordance with the rules of section 446(e) and § 1.446–1(e).

(v) *Untimely election to use simplified inventory method.* If a taxpayer makes an election described in this paragraph (r) after the times set forth in paragraph (r)(3) (i) or (ii) of this section, the taxpayer must comply with the requirements of § 1.446–1(e)(3) in order to secure the consent of the Commissioner to change to the method of accounting prescribed in this paragraph (r). The taxpayer generally will be subject to terms and conditions designed to place the taxpayer in a position no more favorable than a taxpayer that timely complied with paragraph (r)(3) (i) and (ii) of this section, whichever is applicable.

(4) *Example.* The following example illustrates the provisions of this paragraph (r).

Example. (i) Corporation L is a calendar year manufacturer of baseball bats and uses the LIFO method of accounting for inventories. During 1987, 1988, and 1989, L's cost of goods sold in computing taxable income was as follows:

	1987	1988	1989
Beginning LIFO inventory	$3,000	$4,000	$5,000
Purchases and other costs	9,000	9,000	9,000
Ending LIFO inventory	(4,000)	(5,000)	(6,000)
Cost of goods sold	8,000	8,000	8,000

(ii) L has no preferences under section 57 during 1987, 1988, and 1989. L's sole adjustment in computing alternative minimum tax during 1987, 1988, and 1989 was the depreciation adjustment under section 56(a)(1). Depreciation determined for both production and non-production assets under section 168 and under section 56(a)(1) during 1987, 1988, and 1989 was as follows:

	1987	1988	1989
Section 168 depreciation	$1,800	$1,800	$1,800
Section 56(a)(1) depreciation	(900)	(900)	(900)
Depreciation difference	900	900	900
Portion of difference capitalized in the increase in inventory	(100)	(100)	(100)
Adjustment required under section 56(a)(1)	800	800	800

(iii) In computing taxable income, a portion of each year's section 168 depreciation attributable to production assets is deducted currently and a portion is capitalized into the increase in ending inventory. For 1987, 1988, and 1989, L computed alternative minimum tax by deducting the cost of goods sold which was reflected in taxable income ($8,000) in accordance with paragraph (r)(2)(i) of this section. For 1987, 1988, and 1989, L also modified its adjustments under sections 56 and 58 and its preferences under section 57 to disregard the portion of any adjustment or preference that was capitalized in inventory. Thus, under section 56(a)(1), L increased alternative minimum taxable income during each year by $900.

(iv) L is eligible to make the election under paragraph (r)(1) of this section in accordance with paragraph (r)(3)(i) of this section (a prospective election).

(v) L must compute its LIFO recapture adjustment for each year by reference to—

(A) The FIFO inventory amount after applying the provisions of section 263A but before applying the adjustments of sections 56 and 58 and the items of preference in section 57; and

(B) The LIFO inventory amount used in computing taxable income.

(5) *Election to use alternative minimum tax inventories to compute adjusted current earnings.* A taxpayer may elect under this paragraph (r)(5) to use the inventory amounts used to compute pre-adjustment alternative minimum taxable income in computing its adjusted current earnings. Rules similar to those of paragraphs (r)(2) and (r)(3) of this section apply for purposes of this election.

(s) *Adjustment for alternative tax energy preference deduction*—(1) *In general.* For purposes of computing adjusted current earnings, any taxpayer claiming a deduction under section 56(h) must properly decrease basis by the portion of the deduction allowed under section 56(h) which is attributable to adjustments under section 56(g)(4). In taxable years following the taxable year in which the section 56(h) deduction is claimed, basis recovery (including amortization, depletion, and gain on sale) must properly take into account this basis reduction.

(2) *Example.* The following example illustrates the provisions of this paragraph (s):

Example. Corporation A, a calendar year taxpayer, incurs $100 of intangible drilling costs on January 1, 1994 and as a result of these intangible drilling costs A claims a deduction under section 56(h) of $40. Assume that $20 of A's deduction under section 56(h) is attributable to the adjustment under paragraph (f)(1) of this section. A must reduce by $20 the amount of intangible drilling costs to be amortized under paragraph (f)(1) of this section in 1995 through 1998 (the balance of the 60-month amortization period).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. The table in § 602.101(c) is amended by adding the entry "1.56(g)–1 . . . 1545–1233".

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved October 29, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–30811 Filed 12–18–92; 8:45 am]

BILLING CODE 4830–01–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. 92-5]

Renewal Copyright Registration

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is amending the regulations governing renewal registration practices and procedures under section 304(a) of the Copyright Act of 1976, title 17 of the United States Code, as amended by the Copyright Amendments Act of 1992, Public Law 102-307, 106 Stat. 264. The Act provides for automatic renewal of copyrights secured between January 1, 1964, and December 31, 1977, if renewal registration is not made during the twenty-eighth year of the original term of copyright. The Act also permits renewal registration during the twenty-eighth year of the first term of copyright or anytime during the renewal term. These final regulations will implement the changes in section 304(a) of the Copyright Act.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540; Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Section 304(a) of the Copyright Act of 1976, title 17 of the United States Code, establishes the duration of copyright for works in which copyright already subsisted on January 1, 1978, the effective date of the 1976 Copyright Act. As enacted, the section provided generally that copyright, the first term of which is subsisting on January 1, 1978, endures for 28 years from the date it was originally secured, and that a second term of copyright lasting 47 years, can be secured by certain designated claimants if an acceptable application for renewal is made to the Copyright Office during the last year of the original term of copyright.

2. Automatic Renewal Act

The Copyright Amendments Act of 1992, Public Law 102-307, 106 Stat. 264 (Act of June 26, 1992) (hereafter "Automatic Renewal Act") amends section 304(a) to provide for the automatic renewal of copyright for works originally copyrighted between January 1, 1964, and December 31, 1977. The Automatic Renewal Act also permits renewal registration to be made during the last year of the original term of copyright or at anytime during the renewal term, whether or not original term registration was made. Original term registration can only be made before the expiration of the original twenty-eight year term of copyright. Renewal registration is not a condition of the renewal and extension of the copyright.

If a claim to the renewal term is made within one year before expiration of the original term of copyright and the claim is registered, the renewal term vests in the person or entity entitled to make the renewal claim on the effective date of registration. If no such claim is made and registered, the renewal term vests in the person or entity entitled to claim the renewal term on the last day of the original term of copyright.

The Automatic Renewal Act makes no change in the statutory renewal claimants or in their order of priority.

Renewal registration may be made at anytime during the renewed and extended term whether or not registration was made for the original term of copyright. If no original term registration is made, the Register is authorized to request information with respect to the existence, ownership, or duration of the copyright for the original term.

If renewal registration is made during the last year of the original term, registration vests the legal ownership of the second term in the statutory renewal

claimant who is living on the date of registration. The subsequent death of the author-renewal claimant, for example, during the last year of the original term would have no effect on ownership of the second term.

If renewal registration is made during the last year of the original term of copyright, the certificate of such renewal registration constitutes prima facie evidence as to the validity of the copyright during the renewal term and of the facts stated in the certificate. The evidentiary weight accorded to the certificate of a registration entered during the renewal term is at the discretion of the court.

If a renewal registration is not made within one year before expiration of the original term of copyright, a first-term derivative work prepared under authority of a grant of a transfer or license of copyright may continue to be used under the terms of the grant during the renewal term without infringing the copyright, but no new derivative works may be made under the grant.

Statutory damages and attorney's fees are withheld for unregistered works, that is, if neither original term nor renewal registration is made. All of the remedies are available with respect to infringements occurring after registration is made.

3. Renewal Registration Changes

The Copyright Office is amending its renewal registration regulation, 37 CFR 202.17, to provide the conditions and requirements for registration of renewal claims during the last year of the original term of copyright or during the renewal term and to provide for the information and deposit material which must be submitted with a renewal registration claim in those cases where no original registration is made.

These regulations make clear that renewal registration is optional for works originally copyrighted between January 1, 1964, and December 31, 1977, but that, although the copyright may be renewed automatically, different legal consequences follow from the fact of registration or the time when registration is made. The regulations generally require timely registration in the last year of the original term in order to vest the renewal copyright by registration. If renewal registration is not made in the last year of the original term, the copyright is renewed automatically by law. In that case, renewal registration may be made at any time during the already renewed term of copyright.

The regulations no longer require original term registration as a pre-condition of renewal registration, although original term registration is encouraged before expiration of the original term. Once the original term expires, it is no longer possible to make original term registration.

If original term registration is not made, the regulations prescribe a new procedure, which is based on a modification of the Universal Copyright Convention Affidavit procedure of the former regulations. The renewal application Form RE must be accompanied by an Addendum and an appropriate deposit of the work in accordance with the requirements of 37 CFR 202.20 and 202.21. The information in the Addendum to Form RE is necessary to establish to the satisfaction of the Examiner that copyright subsists in the original term which is capable of renewal. The deposit copy facilitates the examination of the claim to copyright which is submitted for renewal, and is available for accession by the Library of Congress to its collections for the benefit of the Nation.

Since these final regulations make technical adjustments in registration practices reflecting the Automatic Renewal Act and since the adjustments benefit the public by making renewal registration easier, the regulations are issued in final form and take effect upon publication.

4. The Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all" actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

List of Subjects in 37 CFR Parts 201 and 202

Copyright registration.

Final Rules

In consideration of the foregoing, 37 CFR parts 201 and 202 are amended in the manner set forth below.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows.

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §1A201.7 is also issued under 17 U.S.C. 408, 409, and 410; §1A210.16 is also issued under 17 U.S.C. 116. §1A201.24 is also issued under Public Law 101-650, 104 Stat. 5089, 5134. §1A201.6 is also issued under 17 U.S.C. 708; §1A201.17 is also issued under 17 U.S.C. 111; §1A201.19 is also issued under 17 U.S.C. 115.

2. Section 201.5(b)(2)(iv) is revised to read as follows:

§ 201.5 Corrections and amplifications of copyright registrations; applications for supplementary registration.

* * * * *

(b) * * *

(2) * * *

(iv) Where a basic renewal registration has been made for a work during the last year of the relevant first-term copyright, supplementary registration to correct the renewal claimant or basis of claim or to add a renewal claimant is ordinarily possible only if the application for supplementary registration and fee are received in the Copyright Office within the last year of the relevant first-term copyright. If the error or omission in a basic renewal registration is extremely minor, and does not involve the identity of the renewal claimant or the legal basis of the claim. supplementary registration may be made at any time. In an exceptional case, however, supplementary registration may be made to correct the name of the renewal claimant and the legal basis of the claim at any time if clear, convincing, objective documentation is submitted to the Copyright Office which proves that an inadvertent error was made in failing to designate the correct living statutory renewal claimant in the basic renewal registration.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

3. The authority citation for part 202 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §§1A202.3, 202.19, 202.20, 202.21, and 202.22 are also issued under 17 U.S.C. 407 and 408.

4. Section 202.17 is amended by revising paragraphs (a) through (f) in their entirety and by adding new paragraphs (g) through (h) as follows:

§ 202.17 Renewals.

(a) *General.* This section prescribes rules pertaining to the application for renewal copyright under section 304(a) of title 17 of the United States Code, as amended by Public Law 102-307.

(b) *Definition.* For purposes of this section, the term *posthumous work* means a work that was unpublished on the date of the death of the author and with respect to which no copyright assignment or other contract for exploitation of the work occurred during the author's lifetime.

(c) *Renewal registration optional.* For works originally copyrighted between January 1, 1964 and December 31, 1977 renewal registration is optional and not a condition for securing copyright for the new and extended forty-seven year second term. As provided in Public Law 102-307, 106 Stat. 264 (Act of June 26, 1992), however, renewal of copyright by registration during the last year of the original term and renewal registration during the forty-seven year extended term of a copyright renewed without registration by operation of Public Law 102-307 differ in legal effect. Among other effects, renewal of copyright by registration during the last year of the original term vests the renewal copyright in the statutory renewal claimant(s) living on the date of registration.

(d) *Original term registration.* (1) Registration of a claim to copyright in the original twenty-eight year term is not a pre-condition for making a renewal registration, provided the renewal application is accompanied by an Addendum to Form RE and the deposit copy, phonorecord, or identifying material specified in paragraph (h) of this section.

(2) Original term registration can only be made before the expiration of the original term of copyright in the work.

(e) *Renewal time limits.* (1) For works originally copyrighted between January 1, 1964, and December 31, 1977, claims to renewal copyright may be registered within the last year of the original term, which begins on December 31 of the 27th year of the copyright, and runs through December 31 of the 28th year of the copyright, or at anytime during the extended forty-seven year second term, if the second term is renewed by operation of Public Law 102-307, 106 Stat. 264. The original copyright term for a published work is computed from the date of first publication; the term for a work originally registered in unpublished form is computed from the date of registration in the Copyright Office. To vest the renewal copyright by registration, the required renewal application, fee, and, if original term registration has not been made, the Addendum specified in paragraph (h) of this section must be received in the Copyright Office during the prescribed period before the first term of copyright expires. The Copyright Office has no discretion to extend the renewal time limits for vesting of the renewal copyright by registration.

(2) The provisions of paragraph (e)(1) of this section are subject to the following qualification: In order to vest the renewal copyright by registration in any case where the year date in the notice on copies distributed by authority of the copyright owner is earlier than the year of first publication, claims to renewal copyright must be registered within the last year of the original copyright term, which begins on December 31 of the 27th year from the year contained in the notice, and runs through December 31 of the 28th year from the year contained in the notice.

(3) Whenever a renewal applicant has cause to believe that a formal application for renewal, which is intended to vest the renewal copyright by registration, and any accompanying Addendum relating to subsistence of first-term copyright, if sent to the Copyright Office by mail, might not be received in the Copyright Office before expiration of the time limits provided by 17 U.S.C. 304(a) for vesting of the renewal copyright by registration, he or she may apply for renewal registration by telegraphic, telefacsimile, or similar written communication. An application made by this method will be accepted only if:

(i) The message is received in the Copyright Office within the specified time limits for vesting by registration;

(ii) The applicant adequately identifies the work involved, the date of first publication or original registration, the name and address of the renewal claimant, and the statutory basis of the renewal claim;

(iii) The fee for renewal registration, if not already on deposit, is received in the Copyright Office before the time for renewal registration has expired; and

(iv) A formal application for renewal (Form RE) (or a fax copy) and in the case of works under paragraph (h) of this section, an accompanying Addendum relating to the subsistence of first-term copyright are also received in the Copyright Office before April 1 of the following year.

(f) *Renewal claimants.* (1) Except as otherwise provided by paragraphs (f)(2) and (3) of this section, renewal claims may be registered only in the name(s) of the eligible person(s) falling within one of the following classes of renewal claimants specified in section 304(a) of the copyright law. If the work was a new version of a previous work, renewal may be claimed only in the new matter. If the renewal claim is submitted during the last year of the original term of copyright, the renewal must be made in the name(s) of the statutory claimant(s) entitled to claim the renewal on the date the renewal claim is submitted to the Copyright Office for registration. If the renewal claim is submitted during the forty-seven year renewal term, the renewal claim can only be registered in the name(s) of the statutory claimant(s) entitled to claim the renewal on the last day (December 31st) of the original term of copyright.

(i) In the case of any posthumous work or of any periodical, encyclopedia, or other composite work upon which the copyright was originally secured by the proprietor thereof, the renewal claim may be registered in the name of the proprietor;

(ii) In the case of any work copyrighted by a corporate body (otherwise than as assignees or licensees of the individual author) or by an employer for whom such work is made for hire, the renewal claim may be registered in the name of the proprietor; and

(iii) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the renewal claim may be registered in the name(s) of the following person(s) in descending order of eligibility:

(A) The author of the work, if still living;

(B) The widow, widower, or children of the author, if the author is not living;

(C) The author's executors, if there is a will and neither the author nor any widow, widower, or child of the author is living;

(D) The author's next of kin, in the absence of a will and if neither the author nor any widow, widower, or child of the author is living.

(2) The provisions of paragraph (f)(1) are subject to the following qualification: Notwithstanding the definition of "posthumous work" in paragraph (b) of this section, a renewal claim may be registered in the name of the proprietor of the work, as well as in the name of the appropriate claimant under paragraph (f)(1)(iii), in any case where a contract for exploitation of the work but no copyright assignment in the work has occurred during the author's lifetime. However, registration by the Copyright Office in this case should not be interpreted as evidencing the validity of the claim.

(3) The provisions of paragraphs (f)(1)(iii)(C) and (D) of this section are subject to the following qualifications:

(i) In any case where:

(A) The author has left a will which names no executor;

(B) The author has left a will which names an executor who cannot or will not serve in that capacity; or

(C) The author has left a will which names an executor who has been discharged upon settlement of the estate or removed before the estate has been completely administered, the renewal claim may be registered either in the name of an administrator cum testamento annexo (administrator c.t.a.) or an administrator de bonis non cum testamento annexo (administrator d.b.n.c.t.a.) so appointed by a court of competent jurisdiction.

(ii) In any case described in paragraph (f)(3)(i) of this section, except in the case where the author has left a will without naming an executor and a court appointed administrator c.t.a. or administrator d.b.n.c.t.a. is in existence at the time of renewal registration, the renewal claim also may be registered in the name of the author's next of kin. However, registration by the Copyright Office of the conflicting renewal claims in these cases should not be interpreted as evidencing the validity of either claim.

(g) *Application for renewal registration.* (1) Each application for renewal registration shall be submitted on Form RE. Copies of Form RE, and if applicable, the Addendum to Form RE, are available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, Washington, DC 20559.

(2)(i) An application for renewal registration may be submitted by any eligible statutory renewal claimant as specified in paragraph (f) of this section or by the duty authorized agent of any such claimant.

(ii) An application for renewal registration shall be accompanied by a fee of $20. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of:

(A) A designation of whether the applicant is the renewal claimant, or the duly authorized agent of such claimant (whose identity shall also be given);

(B) The handwritten signature of such claimant or agent, accompanied by the typewritten or printed name of that person;

(C) A declaration that the statements made in the application are correct to the best of that person's knowledge; and

(D) The date of certification.

(iii) In the case of an application for renewal registration of a work for which no original registration was made, the application shall be accompanied by an Addendum and deposit material in accordance with paragraph (h) of this section.

(3) Once a renewal registration has been made, the Copyright Office will not accept a duplicate application for renewal registration on behalf of the same renewal claimant.

(h) *Addendum for an unregistered work*--(1) *Content.* If original term registration is not timely made for a work, the renewal application Form RE must be accompanied by an Addendum to Form RE which must contain the following information:

(i) The title of the work;

(ii) The name of the author(s);

(iii) The date of first publication of the work;

(iv) The place of first publication of the work;

(v) The citizenship of the author(s) on the date of first publication of the work;

(vi) The domicile of the author(s) on the date of first publication of the work;

(vii) An averment that, at the time of first publication, all the copies of the work published under the authority of the author or other copyright proprietor bore the copyright notice required by the Copyright Act of 1909, title 17 of the United States Code in effect on December 31, 1977, and that United States copyright subsists in the work; and

(viii) For works of United States origin which were subject to the manufacturing provisions of section 16 of the Copyright Act of 1909 as it existed at the time the work was published, the Addendum must also contain information about the country of manufacture and the manufacturing processes.

(2) *Signature.* The Addendum must contain the handwritten signature of the renewal claimant or the duly authorized agent of the renewal claimant. The signature shall (i) be accompanied by the printed typewritten name of the person signing the Addendum and by the date of the signature; and (ii) shall be immediately preceded by the following printed or typewritten statement in accordance with section 1746 of title 28 of the United States Code: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

(3) *Deposit requirement for an unregistered work.* In addition to the Addendum to Form RE, an application for renewal registration of a work for which no original term registration is made must be accompanied by one copy or phonorecord or identifying material of the work as first published in accordance with the deposit requirements set out in sections 202.20 and 202.21 of the Copyright Office regulations for basic registration.

(4) *Waiver of the deposit requirement.* In a case where the renewal applicant asserts that it is either physically impossible or otherwise an undue hardship to satisfy the deposit requirements of §§1A202.20 and 202.21, the Copyright Office, at its discretion, may, upon receipt of an acceptable explanation of the inability to submit such copy or identifying material, permit the deposit of the following in the descending order of preference:

(i) A reprint, photocopy, or identifying reproduction of the work as first published; or

(ii)(A) A photocopy of the title page of the work as first published;

(B) A photocopy of the page of the work as first published bearing the copyright notice;

(C) A specification as to the location, relative to each other, of the title and notice pages of the work as first published, if the pages are different; and

(D) A brief description of the copyrightable content of the work, which is sufficient to enable the Copyright Office to examine the work. The Examining Division of the Copyright Office may request deposit of additional descriptive material if the original submission is inadequate.

Dated: November 24, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 92-30586 Filed 12-18-92; 8:45 am]

Billing Code 1410-07-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT3-5448; FRL-4543-6]

Approval and Promulgation of State Implementation Plans; Montana; Open Burning Regulation Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action, EPA is disapproving revisions to the Montana State Implementation Plan (SIP) that were submitted by the Governor of Montana on April 9, 1991. The revisions were made to the Administrative Rules of Montana (ARM) 16.8.1302 and 16.8.1307 to allow the open burning of creosote-treated railroad ties, which was previously prohibited in ARM 16.8.1302.

EPA is disapproving the revisions because they are in direct conflict with the Montana Clean Air Act as approved in the SIP, which states that it is the policy of the State to "achieve and maintain such levels of air quality as will protect human health and welfare." In addition, the revisions did not meet many provisions of the amended Clean Air Act (CAA). Specifically, the regulation revision did not contain enforceable emissions limitations and a plan for determining compliance with the emissions limitations, nor did the State address the impacts of the relaxation of the open burning regulation on the State's PM-10 nonattainment areas.

Any source for which a permit was issued under the State's revised open burning rules may become subject to EPA enforcement of the previous version of the open burning rule approved in the SIP, which strictly prohibits the open burning of creosote-treated railroad ties.

EFFECTIVE DATE: This rule will become effective on January 21, 1993.

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405.

Montana Department of Health and Environmental Services, Air Quality Bureau, Cogswell Building, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405, (303) 293-1765.

SUPPLEMENTARY INFORMATION:

A. History

Montana has revised its open burning regulations several times. The original version, which was effective November, 1968, did not specifically prohibit the burning of treated wood. However, the regulation did prohibit the burning of "chicken litter, animal droppings, garbage, dead animals, tires, waste oil, tar paper and similar materials creating dense smoke when burned." This regulation was submitted in the 1972 SIP submittal, which was approved by EPA.

A 1978 version of the open burning regulation strictly prohibited the burning of railroad ties, as follows: "Chicken litter, animal droppings, garbage, dead animals or parts of dead animals, tires, pathogenic wastes, explosives, oil, railroad ties, tar paper, or toxic wastes shall not be disposed of by open burning." This version was also approved by EPA, thus amending the federally-approved Montana SIP to prohibit these open burning activities.

On April 22, 1982, the State submitted a revision to the SIP, which included a revision to the open burning regulation. In this version of the open burning regulation, under ARM 16.8.1302, "Prohibited Open Burning," the State prohibited the burning of "treated lumber and timbers." This regulation was approved by EPA as a SIP revision on July 15, 1982 (47 FR 30762).

B. 1991 Submittal

On April 9, 1991, the Governor of Montana submitted revisions to the SIP. A revision was made to ARM 16.8.1302 to prohibit the burning of treated lumber and timbers, "except creosote-treated railroad ties * * *." Revisions were also made to ARM 16.8.1307 to provide for the permitting of the disposal of railroad ties through open burning. Other revisions were made to ARM 16.8.1307 to include additional provisions for all conditional air quality open burning permits.

The State was notified, on June 12, 1991, that the submittal was administratively and technically complete. In that letter, however, EPA raised several concerns about the toxicity and hazards associated with the burning of creosote-treated wood products and requested further information from the State on how Montana would ensure protection of human health and welfare with the regulation revision. The State indicated that it would not be able to respond to EPA's concerns until a much later date. In order to meet statutory deadlines for processing SIP submittals, EPA decided to continue processing the submittal. EPA determined that the State submittal was in direct conflict with section 75-2-102 of the Montana Clean Air Act, which states that it is the public policy of the State to "achieve and maintain such levels of air quality as will protect human health and welfare," because the submittal did not adequately show how the public health and welfare would be protected during the open burns of creosote-treated railroad ties. Since the Montana Clean Air Act is in the approved SIP, the regulation revision was found to be in direct conflict with the existing SIP.

For additional information, EPA reviewed an open burn permit which the State had issued to Burlington Northern Railroad on June 24, 1991 to burn creosote-treated railroad ties in accordance with its revised open burning regulations. EPA's review found that the conditions of the permit did not clearly define any specific procedures for open burning to reduce emissions. In addition, under subtitle C of the Resource Conservation and Recovery Act (RCRA), material that is disposed of, burned, or treated before being burned is defined as solid waste pursuant to 40 CFR 261.2, and a generator of solid waste must determine if the solid waste meets a determination of hazardous waste, as defined in 40 CFR 261, subparts C and D. The State, however, did not require that the source make a determination of whether the material to be burned constituted hazardous waste. The State did require that railroad ties must not be burned within two miles of any community. However, due to the toxicity and hazards associated with the burning of creosote-treated railroad ties, EPA was concerned that this requirement may not fully ensure adequate protection of human health and welfare.

On September 12, 1991, EPA notified the State that EPA would be proposing to disapprove the SIP revision on the basis that the open burning regulation lacked the specific requirements to adequately ensure the protection of human health and welfare, in direct conflict with the approved SIP. Additional review of the open burn permit issued to Burlington Northern Railroad substantiated EPA's concerns about protection of the public health.

However, EPA also provided the State with further opportunity to submit any additional information which might address EPA's concerns by October 1,

1991. In a letter dated September 30, 1991, the State notified EPA that it was unable to respond to EPA's concerns within the timeframe given. The State indicated that it would continue to examine its options, and would keep EPA informed of any decisions. Therefore, on January 2, 1992, EPA published its proposal to disapprove the revisions to the State's open burning regulations (57 FR 23). Since no comments were received pursuant to the proposed disapproval, EPA is proceeding with its final disapproval.

In addition to the reasons described above, EPA notes that this SIP revision must be disapproved as provided under sections 110(l) and 193 of the CAA. Many areas in the State of Montana are currently designated as nonattainment for the PM–10 national ambient air quality standards (NAAQS) (see 56 FR 56694, 56794, published on November 6, 1991). Further, as provided in section 107(d)(4)(B)(iii) of the CAA, those areas in the State not designated nonattainment for PM–10 are designated as unclassifiable for PM–10.

Section 110(l) of the CAA provides that EPA shall not approve a SIP revision if the revision interferes with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. The State of Montana has not adequately addressed the impact of the proposed SIP revision on, among other things, continued maintenance of the PM–10 NAAQS in those areas of the State currently designated unclassifiable for PM–10. Similarly, the State has not adequately addressed the impact of the relaxation on reasonable further progress and timely attainment of the PM–10 NAAQS in those areas in the State currently designated nonattainment for PM–10.

Section 193 of the CAA prohibits the modification in any manner of any control requirement in effect, or required to be adopted by a plan in effect before November 15, 1990, in any area which is nonattainment for any pollutant unless the modification insures equivalent or greater emission reductions of such air pollutant. This provision evinces an antibacksliding principle—a Congressional intent to keep emissions reductions in nonattainment areas at least at their November 15, 1990 levels. The State has not adequately addressed the potential impact of the proposed relaxation on PM–10 nonattainment areas in the State. Moreover, the State has not demonstrated that the relaxation is accompanied with at least equivalent emission reductions of PM–10 in any affected PM–10 nonattainment area in Montana.

Final Action

EPA is disapproving revisions to the open burning regulations in the Montana SIP, submitted by the Governor of Montana on April 9, 1991. The disapproval pertains to those revisions made to ARM 16.8.1302 and 16.8.1307, which allow the open burning of creosote-treated railroad ties.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by February 19, 1992. Filing a petition for reconsideration by the Administrator of the final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 16, 1992.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1384 is amended by designating the existing text as paragraph(a) and by adding paragraph (b) to read as follows:

§ 52.1384 Emission control regulation.

* * * * *

(b) The provisions for the open burning of creosote-treated railroad ties in the Administrative Rules of Montana (ARM) 16.8.1302 and 16.8.1307, which were submitted by the Governor on April 9, 1991, are disapproved because:

(1) The regulations do not adequately demonstrate how public health and welfare will be protected, in direct conflict with section 75–2–102 of the Montana Clean Air Act, as approved in the SIP;

(2) The regulations do not satisfy the enforcement imperatives of section 110(a)(2) of the Clean Air Act, which require that a plan contain enforceable emission limitations and a program for determining compliance; and

(3) The revised regulations relax the control of emissions without any accompanying analysis demonstrating that these relaxations will not interfere with attainment and maintenance of the PM–10 national ambient air quality standards, and without any accompanying analysis demonstrating the potential impact on PM–10 nonattainment areas in the State and whether equivalent or greater emission reductions are insured in such areas, per the requirements of sections 110(1) and 193 of the amended Clean Air Act.

[FR Doc. 92–30005 Filed 12–18–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7558]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of

property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State	Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
NEW ELIGIBLES—Regular Program:				
North Carolina	Windfall, Town of Perquimans County.	370345	November 5, 1992	July 3, 1985.
REINSTATEMENT—Regular Program:				
West Virginia	Charles Town, City of Jefferson County.	540066	April 24, 1975, Emerg.; December 4, 1979, Reg.; September 30, 1992, Susp.; November 2, 1992, Rein.	September 30, 1992.
Pennsylvania	Montgomery, Township of Franklin County.	422426	August 1, 1979, Emerg.; August 1, 1986, Reg.; November 4, 1992, Susp.; November 12, 1992, Rein.	November 4, 1992.
Kansas	Cowley County Unincorporated Areas.	200563	February 26, 1979, Emerg.; August 5, 1991, Reg.; August 19, 1991, Susp.; November 12, 1992, Rein.	August 5, 1991.
New Hampshire	Stark, Town of Coos County	330038	March 30, 1976, Emerg.; April 2, 1986, Reg.; April 2, 1986, Susp.; November 19, 1992, Rein.	April 2, 1986.
New York	Ellenburg, Town of Clinton County.	361382	May 23, 1984, Emerg.; March 4, 1986, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	March 4, 1986.
Do	Genesee, Town of Allegany County.	361101	October 18, 1978, Emerg.; July 30, 1992, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	July 30, 1982.
Do	Humphrey, Town of Cattaraugus County.	360078	April 13, 1981, Emerg.; August 13, 1982, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	August 13, 1982.
Do	Maryland, Town of Otsego County.	361272	August 30, 1976, Emerg.; June 3, 1986, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	June 3, 1986.
Do	Moira, Town of Franklin County.	361125	May 23, 1984, Emerg.; April 15, 1992, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	April 15, 1986.
Do	Morris, Town of Otsego County.	361273	April 12, 1976, Emerg.; January 3, 1986, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	January 3, 1986.
Do	Steuben, Town of Oneida County.	360555	June 13, 1983, Emerg.; September 24, 1984, Reg.; November 4, 1992, Susp.; November 19, 1992, Rein.	September 24, 1984.
West Virginia	Chapmanville, Town of Logan County.	540092	January 29, 1971, Emerg.; August 27, 1971, Reg.; April 15, 1973, Susp.; January 3, 1975, Rein.; November 18, 1992, Susp.; November 27, 1992, Rein.	November 16, 1983.

State	Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Do	Delbarton, Town of Mingo County.	540134	October 13, 1972, Emerg.; March 15, 1977, Reg.; November 18, 1992, Susp.; November 27, 1992, Rein.	November 1, 1985.
Do	Gilbert, Town of Mingo County.	540135	July 7, 1972, Emerg.; May 2, 1977, Reg.; November 18, 1992, Susp.; November 27, 1992, Rein.	November 15, 1985.
Do	Henderson, Town of Mason County.	540251	May 27, 1975, Emerg.; May 15, 1978, Reg.; November 18, 1992, Susp.; November 27, 1992, Rein.	May 15, 1978.
Do	Kermit, Town of Mingo County.	540136	December 1, 1972, Emerg.; March 1, 1978, Reg.; November 18, 1992, Susp.; November 27, 1992, Rein.	November 15, 1985.
Region III:				
Pennsylvania	Ashland, Borough of Schuylkill County.	420765	November 4, 1992; Suspension Withdrawn	September 17, 1992.
Region IV:				
Florida	Clay County Unincorporated Areas.	120064	.....do	November 4, 1992.
Mississippi	Terry, Town of Hinds County	280073	.....do	November 4, 1992.
Region VI:				
Oklahoma	Noble County Unincorporated Areas.	400132	.....do	November 18, 1992.
Region VII:				
Iowa	Polk County Unincorporated Areas.	190091	.....do	November 18, 1992.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: December 16, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-30864 Filed 12-18-92; 8:45 am]

BILLING CODE 6718-21-M

Proposed Rules

Federal Register
Vol. 57, No. 245
Monday, December 21, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 273

[Amendment No. 347]

Food Stamp Program: Technical Amendments Concerning Disabled in Group Homes and Income Exclusion for Plans for Achieving Self-Support (Pub. L. 102–237)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend Food Stamp Program regulations as a result of certain provisions of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237, December 13, 1991 (105 Stat. 1818)). This rule addresses technical amendments concerning certain disabled persons in group homes and income exclusions for plans for achieving self-support.

DATES: Comments on this proposed rulemaking must be received on or before February 19, 1993, in order to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 or FAX (703) 305–2454. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) in room 720 at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Seymour, at the above address or, by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This proposed rule has been reviewed under Executive Order 12291 and has been classified as non-major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related to QC liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This proposed rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service (FNS), has certified that this rule would not have a significant economic impact on a substantial number of small entities. The changes would affect food stamp applicants and recipients and State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Background

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237, enacted December 13, 1991) contained several technical amendments to the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101–624). This proposed rulemaking concerns two of the technical amendments.

Expanded Opportunity for Using Food Stamps To Pay for Meals in Certain Group Homes

Under current regulations, many, but not all, blind or disabled persons living in a group home may be certified for food stamps. In this rule we are proposing to amend the regulations to expand the provisions governing the eligibility of blind or disabled persons living in group homes to include all persons defined as blind or disabled under the Food Stamp Act of 1977, as amended (7 U.S.C. 2012).

Requirements for participation in the Food Stamp Program by blind or disabled residents of certain group homes are defined by sections 3(g) and 3(i) (7 U.S.C. 2012 (g) and (i)) of the Food Stamp Act (the Act). Section 3(g) concerns the purchase of prepared

meals with food stamps, and section 3(i) concerns residents of institutions.

Under section 3(g), food stamps can only be used to purchase prepared meals under certain circumstances. Blind or disabled (as defined in section 3(i) of the Act) residents of certain group homes can use food stamps to pay for meals provided by their group living arrangement facility if the group living arrangement is: (a) A public or nonprofit residential setting that serves no more than 16 residents and (b) is certified by the appropriate agency or agencies of the State under regulations issued at section 1616(e) of the Social Security Act (42 U.S.C. 1382e(e)) or under standards determined by the Secretary of Agriculture to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act.

Under section 3(i) of the Act, persons who are considered to be residents of institutions or boarding houses cannot receive food stamps. However, the Act excludes certain blind or disabled individuals who reside in some types of group homes from consideration as residents of institutions for purposes of food stamp eligibility. Thus, these individuals are eligible to receive food stamps in certain circumstances.

Prior to passage of the Mickey Leland Act (Pub. L. 101–624), a resident of a group living arrangement had to be blind or disabled and receiving benefits under Title II (Federal Old Age, Survivors, and Disability Insurance Benefits, (Social Security)), or Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act (42 U.S.C. 301 et seq.) in order to be eligible for food stamps. The Mickey Leland Act added residents of group living arrangements who are blind or disabled and receiving benefits under Title I (Old Age Assistance), Title X (Aid to the Blind), and Title XIV (Aid to the Permanently and Totally Disabled) of the Social Security Act. This change was incorporated into the regulations at 7 CFR 271.2 (which defines "Eligible foods" and "Group living arrangement") and 7 CFR 273.1(e)(1)(iii) (which contained eligibility rules for residents of institutions) in a December 4, 1991 rulemaking entitled "Miscellaneous Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act and Food Stamp Certification Policy" (56 FR 63592).

However, for other purposes in the Food Stamp Program, there is an additional definition of "blind" or "disabled" in section 3(r)(2)–(7) of the Food Stamp Act (7 U.S.C. 2012(r)(2)–(7)). Some persons who do not receive benefits under Titles I, II, X, XIV, or XVI of the Social Security Act are nonetheless considered disabled for purposes of qualifying for the medical deduction and for the uncapped shelter deduction. Under current food stamp regulations, however, these persons are not eligible to participate in the Food Stamp Program if they live in a group home.

Section 901 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237) amended section 3(g)(7) and 3(i) of the Act of 1977 to expand eligibility to receive food stamps and to use them to purchase meals provided by certified group living arrangements, to all individuals who meet the Act's definition of "disabled" contained in section 3(r)(2)–(7).

Accordingly, this proposed rule would amend 7 CFR 271.2 to change the definitions of "Eligible foods" and "Group living arrangement" to expand food stamp eligibility to all blind or disabled persons (as defined by the Food Stamp Act) who live in certain group living arrangements and to include meals served to these blind or disabled persons as eligible for purchase with food stamps. In order to implement this change, it is also necessary to amend 7 CFR 273.1(e)(1)(iii) and 273.11(f) so that disabled or blind persons as (defined in 7 CFR 271.2) may apply for and receive food stamps and use their food stamps to pay for meals provided by a group living arrangement.

Exclude Plans for Achieving Self-Support (PASS) From Income

Under 7 CFR 273.9(c) of the food stamp regulations, certain items are excluded from income in determining food stamp eligibility and calculating benefits. These items were expanded by section 903 of Public Law 102–237 and by Public Law 102–265. (Pub. L. 102–265 corrects an oversight in section 903 that omitted blind individuals by expanding the provision in section 903 to the blind.)

One portion of section 903 concerns Plans for Achieving Self-Support (PASS) administered by the Social Security Administration (42 U.S.C. 1382a(b)(4)). The PASS program is designed to help Supplemental Security Income (SSI) recipients become self-supporting. The plans must be approved by the Social Security Administration, and permit an individual to set aside a specified amount of money to be used or deposited into a special account for an approved purpose. Amounts necessary for the fulfillment of the PASS plan are excluded from income and resources under the SSI program.

Under existing regulations, PASS funds are not counted as food stamp resources because the resources of a household member who receives SSI are excluded for food stamp purposes. However, such funds are not excluded from income calculations for food stamp purposes. Section 903 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 and Public Law 102–265 changes this. Under the new provision, funds provided for a PASS plan will now be excluded from income for food stamp purposes.

Accordingly, 7 CFR 273.9 is proposed to be amended to exclude PASS funds from income in determining food stamp eligibility and benefits.

Implementation

The provisions extending food stamp eligibility to all blind or disabled persons (as defined by the Food Stamp Act) who live in certain group living arrangements to include meals served to these blind or disabled persons as eligible for purchase with food stamps were effective and had to be implemented no later than February 1, 1992 in accordance with a December 27, 1991 memorandum to all Regional Administrators of the Food and Nutrition Service.

Also in accordance with that memorandum and the provisions of Public Law 102–237, the income exclusion for PASS accounts is effective on the earlier of: (1) December 13, 1991, the date enactment of Pub. L. 102–237, (2) October 1, 1990, for food stamp households for which the State agency knew, or had notice, that a household member had a PASS, or (3) beginning on the date that a fair hearing was requested contesting the denial of an income exclusion for amounts provided for a PASS. State agencies are not required to do file searches for cases relating to PASS households unless the question of an income exclusion for PASS had been raised with the State agency prior to December 13, 1991.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant program-social programs.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 271 and 273 are proposed to be amended as follows:

1. The authority citation for parts 271 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2,

a. The definition of "Eligible foods" is amended by revising paragraph (5); and

b. The definition of "Group living arrangement" is amended by revising the second sentence.

The revisions read as follows:

§ 271.2 Definitions.

* * * * *

Eligible foods * * * (5) meals prepared and served by a group living arrangement facility to residents who are blind or disabled as defined in paragraphs (2) through (11) of the definition of "Elderly or disabled member" contained in this section;

* * *

* * * * *

Group living arrangement * * * To be eligible for food stamp benefits, a resident of such a group living arrangement must be blind or disabled as defined in paragraphs (2) through (11) of the definition of "Elderly or disabled member" contained in this section.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

3. In § 273.1, paragraph (e)(1)(iii) is amended by removing the words "and who receive benefits under title I, title II, title X, title XIV, or title XVI of the Social Security Act" and adding the words "(as defined in paragraphs (2) through (11) of the definition of "Elderly or disabled member," contained in § 271.2)" after "individuals".

4. In § 273.9, a new paragraph (c)(16) is added to read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) *Income exclusions.* * * *

(16) Income of an SSI recipient which has been determined necessary for the fulfillment of a plan for achieving self-support (PASS) which has been approved under sections 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. This income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

* * * * *

5. In § 273.11,

a. The heading of paragraph (f) is revised;

b. The first sentence of paragraph (f)(1) is amended by removing the words, "who receive benefits under title II or title XVI of the Social Security Act"; and

c. Paragraph (f)(3) is amended by removing the words, "who receive benefits under Title II or Title XVI of the Social Security Act".

The revision reads as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(f) *Residents of a group living arrangement.*

* * * * *

Dated: December 8, 1992.

Phyllis R. Gault,

Acting Administrator.

[FR Doc. 92–30839 Filed 12–18–92; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 91N–0404]

Medical Devices; Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations to implement the provisions of the Safe Medical Devices Act of 1990 regarding humanitarian use devices (HUD's). A HUD, i.e., a device which is designed for use in the treatment or diagnosis of a disease or condition that affects fewer than 4,000 individuals in the United States, is exempt from the effectiveness requirements of sections 514 and 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d and 360e). In order to implement this exemption, FDA is proposing to amend the investigational device exemption (IDE) regulations. These proposed revisions prescribe the procedures and conditions for obtaining an IDE for a HUD and provide for certain waivers from the IDE regulation for a HUD.

DATES: Written comments by February 19, 1993. The agency is proposing that any final rule based upon this proposal become effective 30 days after publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION:

I. Background

On November 28, 1990, the President signed into law the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629). In enacting the SMDA, Congress sought to improve the Medical Device Amendments of 1976 (the amendments). The amendments were the first legislation to put in place a comprehensive framework to regulate medical devices and ensure their safety and effectiveness. With regard to diseases and conditions affecting small populations, Congress recognized that the market for devices intended to benefit fewer than 4,000 persons in the United States was limited and that the cost of research and development of these devices makes the recovery of costs by the sponsor unlikely. In the SMDA, Congress enacted an amendment to section 520 of the act (21 U.S.C. 360j) to provide for the needs of these people by creating an incentive for potential sponsors to develop devices for them in the form of a relaxation of the requirements for an investigative study. The purpose of this "humanitarian device exemption" (HDE) is to encourage the development and use of devices intended to benefit patients in the treatment and diagnosis of diseases and conditions that affect fewer than 4,000 individuals in the United States consistent with the protection of the public health and safety and within ethical standards.

Accordingly, section 520(m) of the act (21 U.S.C. 360j(m)) authorizes FDA, by regulation, to exempt a HUD from the effectiveness requirements of sections 514 and 515 of the act. This proposed regulation sets forth the procedures and conditions for the implementation of section 520(m) of the act.

The agency believes that the intent of Congress to facilitate widespread access to HUD's is most effectively implemented by amending the IDE regulations and not by adding a discrete new regulation. The IDE regulations provide the mechanism for institutional review board (IRB) review and approval, patient informed consent, and prohibitions on profit making. Also, the IDE regulations provide flexibility for reviewing various types of investigational studies (e.g., feasibility studies). The proposed regulation would expand somewhat the range of

exemptions envisioned by Congress to include other exemptions offered by the IDE regulations.

Several alternative options were considered and rejected. One option was the revision of the premarket approval (PMA) regulation. If FDA were to follow this course, it would have to create new requirements for IRB review and approval, and patient informed consent would need to be added to the PMA regulation to meet the SMDA provisions. Further, the PMA sponsor would be precluded from making a profit on the device, and the approval for distribution would be limited to a period of 18 months with possible extensions of 18-month increments. All of these constraints are inconsistent with the PMA approval process and its purpose.

A second option was to create a separate regulation for HUD's. However, FDA believes that creation of a new regulation would be unnecessary and duplicative, since a means of implementation separate from IDE procedures would need to be developed for a separate regulation.

FDA is specifically soliciting comments on the advantages or disadvantages of using the IDE regulation as the means to implement section 520(m) of the act, as well as the desirability of using other alternative methods of implementation.

II. Proposed Amendments

A. Scope

Proposed § 812.1(b) (21 CFR 812.1(b)) would expand the scope of the IDE regulations to include provisions for HUD's and would, thus, implement section 520(m) of the act.

B. Applicability

Proposed § 812.2(e) sets forth the circumstances under which the waiver provisions for HUD would be implemented.

This proposed provision would replace current § 812.2(e) (21 CFR 812.2(e)), which is now obsolete. Current § 812.2(e) covers studies on devices formerly regulated as new drugs that had been conducted under an investigational new drug application (IND) before the effective date of the IDE regulations. Because there are now no ongoing device studies under an IND, current § 812.2(e) is no longer applicable. FDA realizes that it is conceivable that there still may be study data collected under the requirements of part 312 (IND regulations) that may be offered in support of a device's commercial distribution. If a sponsor now wishes to use these data to bring a device to market, FDA will evaluate the data on a case-by-case basis in accordance with applicable statutes and regulations.

FDA is proposing to allow humanitarian use status for devices that FDA would classify as "significant risk" devices within the meaning of § 812.3(m), as well as for devices that FDA would classify as "nonsignificant risk" devices. The agency is proposing to do so despite the fact that Congress specifically provided for HDE's for devices that will not expose patients to "an unreasonable or significant risk of illness or injury." (section 520(m)(2)(c) of the act). FDA believes that Congress' purpose in creating HDE's different from the agency's purpose in defining "significant risk devices." This is evidenced by the emphasis that FDA placed in § 812.3 on a "significant risk device" being used in "supporting or sustaining human life" and "for a use of substantial importance is diagnosing * * * or treating disease." These concepts are absent from both the SMDA and its legislative history.

C. Definitions

Proposed § 812.3(d) defines a HUD in accordance with its intended use. The same device may have an approved IDE or be a marketed device for other uses and still be considered a HUD for the purposes of § 812.3(d) if it is also intended for a humanitarian use.

D. Waivers

Proposed § 812.10(d) allows a sponsor of a HUD to request a waiver of certain requirements normally applicable to device investigations. FDA is proposing to amend the IDE regulation to prescribe not only how HUD's may be exempted from the effectiveness requirements of sections 514 and 515 of the act, but also to provide for HUD's with certain waivers from the IDE regulation. By creating waivers specific to HUD's, the agency believes that the safety and integrity of investigational studies of HUD's would be maintained. In addition to the exemptions afforded a sponsor of an approved IDE under § 812.30, a sponsor of a HUD could request that FDA waive other requirements of part 812. All requests for waivers would have to contain information required by proposed §§ 812.20(e) and 812.25(c), and, of course, FDA cannot grant waivers of statutory requirements.

Congress provided that a HUD may be exempted from the effectiveness requirements of sections 514 and 515 of the act only where it is likely to provide some benefit to the individual in the treatment or diagnosis of a rare disease or condition or where it is likely to benefit the individual's quality of life. Because a HUD cannot be fully evaluated in clinical trials due to the limited population, Congress stipulated the conditions under which an exemption may be granted. These conditions are enumerated in proposed § 812.20(e).

E. Applications

Proposed § 812.20(e) sets forth the additional information that the sponsor of an IDE application for a HUD must provide. These requirements would be consistent with Congressional intent concerning HUD's. The evidence needed to document the HUD eligibility is obtainable from numerous sources, i.e., from polls, surveys, medical literature, and data bases. Under the proposal, evidence that the disease or condition affects fewer than 4,000 affected individuals in the United States should be determined as of the time of submission of the application for the HUD. Although proposed § 812.30(e)(1) would allow FDA to withdraw an application's approval if it is found to have been unapprovable under law or regulation, or if an IRB-imposed condition is not met, proposed § 812.30(e)(2) provides that the exemption will not be revoked solely because the prevalence of a disease or condition subsequently exceeds 4,000 individuals in the United States if the applicable requirements of the IDE regulations are otherwise being met. However, the increased prevalence would result in FDA's disapproving an extension request for the HUD and directing the sponsor to comply fully with the IDE regulations. This is proposed in order to add stability and predictability to the HUD process.

Section 812.20(b)(8) of the IDE regulation is not waived for a HUD. This section provides that, if the device is to be sold, the sponsor must include in the application the amount to be charged and an explanation of why the sale does not constitute commercialization of the device. Section 520(m) of the act provides that the sponsor of a HUD may not charge an amount that exceeds the costs of research and development, fabrication, and distribution of the device. The sponsor must address this provision under § 812.20(b)(8) in an application and in a request for extension. The sponsor must make its records pertaining to cost recovery available to FDA for inspection.

FDA believes that Congress provided for cost recovery as an incentive for manufacturers to develop these devices. FDA also believes that reimbursement

by insurance carriers for a HUD would help to fulfill the Congressional intent.

Although FDA is not prepared at this time to accept HUD applications in a computer readable format, the agency intends to have procedures for handling such submissions established in the future. FDA will announce the availability of such procedures when they are established.

F. Investigational Plan

Proposed § 812.25(c)(2) contains a requirement that the investigational plan provide a statement describing the disease or condition that the HUD is intended to be used to treat or diagnose, other demographic characteristics of the patient population, including size and justification of patient population selection, and reference sources.

G. FDA Action on Applications

Proposed § 812.30(d) states that an application for a HUD must be submitted in accordance with §§ 812.20 and 812.25. FDA will notify the sponsor of the duration of the exemption (§ 812.30(d)(2)) and of the sponsor's opportunity to obtain an extension (§ 812.30(d)(3)). These procedures would be in addition to the procedures (§ 812.30(a), (b), and (c)) applicable to any other IDE application.

Under proposed § 812.30(d)(4), FDA enumerates the reasons why it may disapprove an application for a HUD. Proposed § 812.30(e) prescribes the criteria for withdrawal of approval for an IDE application for a HUD granted under proposed §§ 812.10 and 812.30(a). If FDA determines that the application does not meet the requirements of this part, FDA may issue an order of withdrawal of approval. The order would include a statement of reasons for the action.

H. Extensions

Proposed § 812.35(c) describes the conditions under which a sponsor may obtain extensions of exemptions. A request for an exemption extension which would allow the continuation of the investigation would have to contain any relevant new information as to the safety and effectiveness of the HUD or the prevalence of the disease or condition for which the exemption was first approved, in accordance with § 812.35(a) and proposed §§ 812.20(e) and 812.25(c), and must be submitted at least 30 days prior to the expiration of the original or current term of the exemption.

This proposed regulation also implements Congress' mandate (section 520(m)(2) and (m)(3) of the act) that the HUD exemptions be for a period of 18 months initially, with extensions for periods of 18 months each, provided that the requirements of proposed §§ 812.20 (e) and 812.7(b) are met.

I. Confidentiality of Data and Information

Proposed § 812.38(e) prescribes the rules governing confidentiality of data and information in an application for a HUD. For the most part, the rules on confidentiality of data and information in IDE's, generally, would apply to HUD IDE's. However, FDA proposes to publicize both the existence of HUD IDE's and to make available limited information about the IDE so that physicians and patients may benefit from the devices. This proposed disclosure would go beyond what the agency usually releases concerning IDE's and most IND's but is consistent with how the agency releases information concerning treatment IND's and concerning efficacy studies for AIDS drugs. The information that FDA proposes to disclose under § 812.38(e) would include, for example, the identity of the product, disease or condition to be treated, patient inclusion criteria, and the contract person within the sponsoring firm where further information is available.

J. Certification

FDA is proposing to require that each sponsor who submits an application for a HUD certify to the truthfulness and accuracy of the submission.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

The agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (Pub. L. 96–353).

The purpose of this proposed rule is to reduce the requirements imposed on sponsors for conducting research and development activities on devices intended for use in diagnosing or treating small populations. This objective was specified in section 14 of the provisions of the SMDA. Congress believed that full application of the current IDE requirements may be hindering the development of devices intended for use in populations of 4,000 patients or fewer. This proposal sets forth the IDE requirements which can be waived by sponsors of HUD's, including certain recordkeeping and reporting requirements normally applied to investigational devices. These waivers will lead to significant cost savings for the sponsor of HUD's. The agency expects to receive HUD waiver requests for about 10 devices per year, on the average.

In sum, the impact of this rule would be to reduce the burdens of sponsors of humanitarian devices. Therefore, the rule would have no adverse impact on industry, and it would not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The title, description, and respondents of the information collection are shown below with an estimate of the annual recordkeeping and periodic reporting burden.

Title: Medical Devices; Humanitarian Use Devices.

Description: FDA is proposing regulations to implement the provisions of the SMDA regarding HUD's. A HUD, i.e., a device which is designed for use in the treatment or diagnosis of a disease or condition that affects fewer than 4,000 individuals in the United States, is exempt from the effectiveness requirements of sections 514 and 515 of the act. In order to implement this exemption, FDA is proposing to amend the IDE regulations. These proposed regulations prescribe the procedures and conditions for obtaining an IDE for a HUD and provide for certain waivers from the IDE regulation for a HUD.

Description of Respondents: Businesses or other for profit.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Annual No. of respondents/ recordkeepers	Responses per respondent	Total responses/hours per recordkeeper	Annual hours per response	Annual burden hours
812.20 and 812.25	10	1	10	56	560
812.35	10	1	10	56	560
Total					1,120

VI. Effective Date

FDA proposes that any final rule based on this proposal would become effective 30 days after the date of publication of the final rule in the **Federal Register.**

VII. Request for Comments

Interested persons may, on or before February 19, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 812 be amended as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

1. The authority citation of 21 CFR part 812 is revised to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 530–542, 701, 702, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 360gg–360ss, 371, 372, 374, 376, 381); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262).

2. Section 812.1 is amended by redesignating paragraph (b) as paragraph (c) and by adding new paragraph (b) to read as follows:

§ 812.1 Scope.

* * * * *

(b) This part also provides procedures for the use of humanitarian use devices (HUD's) intended to benefit patients in the treatment and diagnosis of diseases or conditions that affect fewer than 4,000 individuals in the United States, and, as such, implements section 520(m) of the act with respect to HUD's.

* * * * *

3. Section 812.2 is amended by revising paragraph (e) to read as follows:

§ 812.2 Applicability.

* * * * *

(e) *Humanitarian use devices.* Use of HUD's is subject to those requirements of this part that have not been waived under § 812.10(b).

4. Section 812.3 is amended by redesignating paragraphs (d) through (s) as paragraph (e) through (t), respectively, and by adding new paragraph (d) to read as follows:

§ 812.3 Definitions.

* * * * *

(d) *Humanitarian use device* (HUD) means a device that is intended for use in the treatment or diagnosis of a disease or condition that affects fewer than 4,000 individuals in the United States and that otherwise meets the requirements in 21 U.S.C. 360j(m)(2). A device may qualify as a HUD whether or not it also qualifies as a "significant risk device." The device may have other uses than humanitarian uses, but a waiver of requirements listed in § 812.10(d)(2) may be obtained only for humanitarian uses.

* * * * *

5. Section 812.10 is amended by adding new paragraph (d) to read as follows:

§ 812.10 Waivers.

* * * * *

(d) *HUD waivers.* A sponsor may request that FDA waive the requirements of those provisions listed in paragraph (d)(2) of this section for HUD's.

(1) Any application submitted under this section for a HUD shall, on its face, be presumed to include a request for a HUD waiver if it includes all the information listed in §§ 812.20 and 812.25 specific to HUD's.

(2) An application for a HUD is exempted from the following provisions of this part:

(i) Section 812.20 (b)(4), (b)(5), (b)(6), and (b)(7).

(ii) Section 812.25 (h), (i), and (j).

(iii) Section 812.35(b).

(iv) Section 812.140 (a)(1), (a)(2), (a)(4), and (a)(5).

(v) Section 812.150 (a)(4), (b)(4), (b)(6), and (b)(9).

6. Section 812.20 is amended by adding new paragraph (e) to read as follows:

§ 812.20 Application.

* * * * *

(e) *Information required for HUD's.* A sponsor of an application for a HUD who wishes a waiver pursuant to the provisions of the Safe Medical Devices Act of 1990 shall submit evidence that:

(1) The device is designed to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States as of the date of submission of the application;

(2) The device would not be available to a person with a rare disease or condition unless the Secretary of Health and Human Services grants such an exemption and there is no comparable device, other than under this exemption, available to treat or diagnose such disease or condition; and

(3) The device will not expose patients to an unreasonable or significant risk of illness or injury and the probable benefit to health from the use of the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

7. Section 812.25 is amended by redesignating the existing text of paragraph (c) as paragraph (c)(1) and by adding new paragraph (c)(2) to read as follows:

§ 812.25 Investigational plan.

* * * * *

(c) *Risk analysis.* (1) * * *

(2) For HUD's a statement:

(i) Describing the disease or condition the humanitarian device is intended to be used to treat or diagnose,

(ii) The size and other known demographic characteristics of the patient population affected,

(iii) The source of the information (documentation, with copies of authoritative references), and

(iv) The justification for the patient population selected.

* * * * *

8. Section 812.30 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 812.30 FDA action on applications.

* * * * *

(d) *Application for a HUD.* (1) An application for a HUD must be submitted in accordance with proposed §§ 812.20 and 812.25.

(2) If FDA approves the application, the period of the exemption or approval will be for 18 months.

(3) FDA may, by letter, approve an extension of the investigation more than once by 18-month increments. The investigation may be extended after the expiration of the 5-year period that begins on the effective date of this regulation, as provided for in section 520(m)(5) of the act.

(4) FDA shall approve an application for a HUD unless it makes one or more of the findings set forth in paragraph (b) of this section or one or more of the following findings:

(i) The device does not meet the requirements of section 520(m)(1) of the act for a HUD.

(ii) The device is indicated for an artificially small group or narrow indication that is not medically justified.

(iii) The report of prior investigations of the device is inadequate to support a conclusion that it is reasonably safe to begin or continue the proposed investigational study for a HUD.

(iv) The sponsor's proposed use of the device is not intended solely for an investigational study and is being or is to be sold or otherwise commercially distributed in a manner not justified by the requirements of the investigational study and not permitted by this part.

(e) *Revocation of an application for a HUD.* (1) FDA may withdraw approval of an application for a HUD at any time if the agency makes one or more of the findings in paragraph (b) of this section or one or more of the following findings:

(i) There has been failure to comply with any requirement of section 520(m) of the act, or of any condition of approval imposed by the IRB or FDA.

(ii) The device was ineligible for humanitarian use at the time the application was submitted.

(2) FDA will not withdraw approval of an application for a HUD solely because the prevalence of the disease or condition for which it is intended subsequently exceeds 4,000 people in the United States, but this fact would serve as a basis for disapproving an extension request and for directing the sponsor to comply fully with the requirements of this part.

9. Section 812.35 is amended by adding new paragraph (c) to read as follows:

§ 812.35 Supplemental applications.

* * * * *

(c) *Request for an extension of a HUD investigation.* (1) A sponsor of an application for a HUD may request FDA to approve an extension under this part. A sponsor shall submit three copies of the extension request with supporting documentation in accordance with § 812.35(a). The supplemental application must also include any new information required in §§ 812.20 and 812.25(c).

(2) The extension request shall be submitted in writing at least 30 days prior to the expiration date of the original term of the investigation approval or of the previous extension.

(3) The extension request shall include, in the following order:

(i) The name and address of the sponsor.

(ii) The IDE identification number.

(iii) The name of the device.

(iv) The reason for the extension request, including any changes or modifications anticipated in the study.

(v) A summary of the current investigation, including safety data, adverse reactions and complications, device failures, and patient benefit assessment.

(4) FDA will approve an extension for a period of 18 months if it finds that the IDE status is still applicable under § 812.30(e) but not if prevalence of the disease exceeds 4,000 individuals in the United States as of the time of submission of the extension application.

10. Section 812.38 is amended by adding new paragraph (e) to read as follows:

§ 812.38 Confidentiality of data and information.

* * * * *

(e) *Availability of data and information in HUD applications.* (1) Except as provided in paragraph (e)(2) of this section, FDA will follow paragraphs (a) through (d) of this section in determining the public availability of data and information on IDE applications for HUD's.

(2) Upon final FDA approval of the IDE application for a HUD, FDA will make publicly available such information on the application as the identity of the device, the disease or condition to be treated, patient exclusion criteria, and the name, address, and telephone number of the sponsor's contact person.

11. New § 812.39 is added to subpart B to read as follows:

§ 812.39 Certification.

Any sponsor who submits an application for a HUD shall certify to the truthfulness and accuracy of the submission with the following statement:

I certify that, to the best of my knowledge, the data and information provided in this submission are true and accurate.

Dated: August 21, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 92-30877 Filed 12-18-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-049-88]

RIN 1545-AL58

Allocation of Income and Loss to Periods Before and After the Change Date for Purposes of Section 382; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to proposed regulations (CO-049-88), which were published Thursday, November 19, 1992 (57 FR 54535). The proposed regulations provide rules for allocating net operating loss or taxable income and net capital loss or gain between the period ending on the change date and the period beginning on the day after the change date.

FOR FURTHER INFORMATION CONTACT: Roberta F. Mann, 202-622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking that is the subject of these corrections relates to section 382 of the Internal Revenue Code.

Need for Correction

As published, the proposed rulemaking contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (CO–049–88), which was the subject of FR Doc. 92–27742, is corrected as follows:

On page 54539, column 1, in § 1.382–6(f), line 1, the language "*Examples.* The rules of section are" is corrected to read "*Examples.* The rules of this § 1.382–6 are".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–30810 Filed 12–18–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN: 1024–AB10

Everglades National Park; Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rulemaking set forth below completely revises the special regulations for Everglades National Park and accomplishes the following: Deletes obsolete mining and commercial fishing regulations; enables the park to adopt State fishing regulations; clarifies the authority of the Superintendent to closely regulate fishing, boating, and significant wildlife habitat sites; specifically closes accessible marine wilderness areas to the use of motorized vessels; prohibits the use of personal watercraft and hovercraft; prohibits the possession as well as the taking of any marine life (including lobster species, ornamental tropical fish, or conch species) other than shrimp, bait or recreational finfish and shellfish species in the park; addresses the activities of commercial guide fishing within the park; and redefines "commercial fishing" to include the commercial taking of sponges and other non-edible marine life.

This rulemaking will be beneficial in that it will eliminate obsolete regulations, remove expired material from the Code of Federal Regulations pertaining to commercial fishing which is now prohibited, will provide for consistency with State fishing rules, and will ensure protection of park resources.

It should be noted that on August 5, 1986, the National Park Service published an earlier version of this proposal as a proposed regulation in the Federal Register (51 FR 28108).

Due to the six year lapse which has occurred since that publication, and due to several changes which have since been incorporated into these proposed regulations, it is felt that a new publication as a proposed rule is warranted, which will allow for greater public comment.

DATES: Written comments, suggestions, or objections will be accepted until January 21, 1993.

ADDRESSES: Comments should be directed to: Superintendent, Everglades National Park, PO Box 279, Homestead, FL 33030.

FOR FURTHER INFORMATION CONTACT: Ken Morgan, Everglades National Park, PO Box 279, Homestead, FL 33030. Telephone (305) 242–7730.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service is proposing to revise the special regulations of the park in order to, among other things, delete obsolete mining rules found in the special regulations for Everglades National Park.

Provisions of the acts of October 10, 1949 (63 Stat. 733), and July 2, 1958 (72 Stat. 280), which will be referred to as "the acts of 1949 and 1958", allowed mineral owners within Everglades National Park to explore for and develop their mineral properties until October 9, 1967. The acts of 1949 and 1958 also provided that if any production of oil or gas occurred during that period, the right to explore and develop would be extended for all mineral owners for the life of such production. At least four exploratory oil and gas wells were drilled during this period, but no discovery was made and no production occurred. Therefore, the provision allowing these activities expired on October 9, 1967.

The acts of 1949 and 1958 also provided that former mineral owners were entitled to customary royalties from any production of their former mineral properties should the Federal government so authorize anytime before January 1, 1985. The Federal government made no such authorization.

The National Park Service adopted special regulations found at 36 CFR 7.45(a) "* * * to govern the exploration, development, extraction, and removal of oil, gas, and other minerals on lands acquired for Everglades National Park * * *" The suspense dates authorized by the acts of 1949 and 1958 for former mineral owners to explore or develop their properties or to benefit from any production by the Federal government have passed. Since Everglades National Park is not at risk from such mineral development, these regulations are no longer necessary and should be deleted.

The National Park Service is also proposing to revise the paragraph at 7.45(c) on prohibited conveyances within Everglades National Park. Sections prohibiting the use of glades buggies and amphibious wheeled vehicles have been deleted as unnecessary and duplicative. The Service's general regulation found at 36 CFR 4.10 prohibits the use of all motor vehicles off established roads and parking areas. This provision provides Everglades with adequate authority to enforce its prohibition.

This paragraph has been further revised, at proposed 7.45(b), to provide clarification to the existing prohibition on the use of vessels or other conveyances with underwater propellers or jets in the water of any grass or marsh area of the park. The existing provision prohibits such use in the "grass area of glades". This phrase is ambiguous and clarification was determined to be necessary. The park believes this proposed prohibition remains necessary to prevent jet skis and small motor boats from operating in marsh areas. Such operation can be destructive to vegetation and disturbing to wildlife.

Three definitions have been revised and three added, at a new § 7.45(d), (existing section is designated as § 7.45(e)). The definition of "guide fisherman" has been revised to delete the phrase "interpretation of the natural resources" in order to drop the requirement for reporting data from persons who are not fishing. Since the current definition was adopted, a number of persons have begun providing birdwatching and sightseeing service, but do not offer fishing trips within the park. By eliminating them from the requirement of obtaining guide fishing permits, the fishing data from monthly guide reports will remain accurate and reflective purely of fishing effort. The term "commercial fishing" has been revised in order to conform with state law which includes all individuals harvesting marine products and to provide additional protection to the marine resources of the park, including commercially attractive sponges. The term "ornamental tropical fish" has been revised to provide consistency with state laws and to provide a definition more easily understood by persons unfamiliar with latin names. A definition of oysters has been added, as the park wishes to adopt state regulations to provide for the

protection of these marine mollusks. Definitions of "hovercraft" and "personal watercraft" have been added since both these activities are proposed to be prohibited by the special regulations of the park. The use of either hovercraft or personal watercraft over emergent vegetation, shallow grass flats, and mud flats commonly used by feeding shore birds is deemed to be inconsistent with the purpose and values for which the park was established. These types of activity are damaging to vegetation and disturbing to the life cycles of the wildlife this park protects.

Several paragraphs at existing § 7.45(f) concerning commercial fishing activities are proposed for deletion because they regulate an activity which has been eliminated from the park since December 31, 1985. The changes remove obsolete language and delete existing §§ 7.45(f)(5), (7), (8), (10), (12), and (14). A new paragraph, § 7.45(e)(5), prohibits commercial fishing, replacing the existing § 7.45(h).

Several paragraphs regulating recreational fishing are also proposed for revision. One proposed change deletes the existing restriction at § 7.45(f)(6) that cast nets may not exceed 12 feet in diameter. There appears to be no sound ecological or environmental reason to restrict the size of cast nets. The proposed change, at § 7.45(e)(10) would bring this park regulations into conformity with existing State regulation and common fishing practice.

Another proposed revision, at § 7.45(e)(12), will allow the staff of Everglades National Park to enforce more restrictive state bag limits for saltwater species. The State of Florida's Marine Fisheries Commission asked the National Park Service to propose this regulatory change and the Service acknowledges that this change would benefit the marine resource and the public by bringing the park into conformity with state laws.

Pursuant to Chapter 80–162, Laws of Florida, a Saltwater Fisheries Study and Advisory Council was appointed by the Governor to recommend to the State Legislature a comprehensive saltwater fishery conservation and management policy. In keeping with this charge, the Council holds public hearings and drafts rules to govern fishing activities within the fisheries of the State of Florida. To date, rules have been promulgated setting seasons, size limits, and bag limits for various species of saltwater gamefish. However, there is concern among fishermen, the park, and the State over the apparent conflict of bag limits set by the Council and those prescribed in the existing regulations which limits possession to ten (10) fish of one species, excluding bait fish, and not totally more than twenty (20) fish of all species. Specifically, in the cases of such popular and stressed species as snook, tarpon, red drum, bonefish, grouper, snapper, and tarpon, the State of Florida has acted, based on professional fisheries management principles, to restrict possession of these species to limits far lower than the park's ten fish per species limit. The National Park Service does not wish to retain unmodified, a regulation that conflicts with such State regulatory actions, and fails to provide appropriate protection to species under great fishing pressure. The proposed regulation provides a more direct avenue for the National Park Service to assimilate and enforce more restrictive State bag limits.

The taking of both oysters and shrimp for personal consumption are traditional uses of the resources of the salt waters of the park. The state has recently developed regulations to further protect these species throughout the state. The assimilation of these rules, again through the proposed revision at § 7.45(e)(12), would produce conformity with state regulations and provide protection to the resource while still permitting this use which is deemed to be consistent with fishing and marine recreation.

Another proposed change is the addition of a prohibition against possession of marine animals which are already protected from taking. The existing regulation at § 7.45(f)(2) prohibits the taking, but not the possession of seahorses, starfish, spiny lobster, ornamental tropical fish, and nonfood fish as defined by the State of Florida. The park believes that to allow for effective enforcement and protection of the resource, possession must be included in the new paragraph, designated as § 7.45(e)(6). This change also makes this provision consistent with the paragraph which prohibits the taking or possession of fish in excess of established bag limits.

Existing § 7.45(f)(13) allowing for the non-commercial taking of oysters by hand and rake, has been amended by the addition of tongs as an approved method of harvest at a new § 7.45(e)(9). Depending upon local vernacular, rake and tongs are often used interchangeably and in any case, are hand-operated devices posing no threat to the resource.

Three separate paragraphs have been added at § 7.45(c)(1), (e)(1), and (f)(1) to clarify the authority of the Superintendent to more closely regulate three of the most significant and popular visitor uses within the park. Service-wide regulation changes in 1983 (48 FR 30252) established a uniform administrative framework for the exercise of a Superintendent's closure and public use control authority. Fishing and boating are probably the two most popular activities for visitors to the park with the potential to adversely affect the resource. Furthermore, viewing the wading-bird and coastal-bird populations of the Everglades is one of the most popular activities within the park. All three of these uses requires close and attentive management in order to provide the delicate balance of protecting the resources while providing for recreation, enjoyment and educational opportunities for the public. Since bird and wildlife populations migrate throughout the seasons and from year to year, the ability to close or limit access to certain areas is essential to the sound and flexible management of the resource.

Additionally, the Service feels that the use of a flexible closure authority, as specified in the paragraph above, would provide more efficient protection to the American Crocodile, an endangered species. The Service could then easily close or limit access to areas the crocodile migrates to, or open an area the crocodile no longer uses. The current regulations (existing § 7.45(g)(4)), established in February, 1980, (45 FR 10350) totally closed many of the small bays, sounds, and creeks in upper Florida Bay to all public entry in order to provide protection for endangered species, primarily the American Crocodile. Other endangered species which may occasionally inhabit these areas include the Kemp's Riddley sea turtle and West Indian manatee. At the time this "sanctuary" type closure was enacted, the American alligator and Loggerhead sea turtle, were also listed as endangered; the Loggerhead sea turtle is now listed as threatened and the alligator is no longer on either list. When this closure was enacted, commercial net fishing was still permitted and would remain permitted for another six (6) years. In addition to protecting the crocodile, this "sanctuary" type protection was deemed necessary at that time in order to provide strong protection to all endangered species from the possibility of being entangled in the nets of fishermen who might unknowingly enter these areas. Commercial fishing was prohibited in all waters of the park after December 31, 1985, and the need to keep these areas closed in order to provide protection to endangered species from fishing nets has dissipated.

During the printing of the existing regulations in the **Federal Register** (45 FR 10350), the Service recognized that a "sanctuary" for the crocodile was an untested concept and that additional long-term observations and study would need to be conducted to evaluate this level of protection. During the intervening time period, there have been several studies of the crocodile within Everglades National Park which have resulted in publications. These include: F.J. Mazzotti's "The Ecology of *Crocodylus acutus* in Florida" (1983), D.L. Stoneburner and J.A. Kushlan's "Heavy Metal Burdens in American Crocodile eggs from Florida Bay, Florida, USA" (1984), J.A. Kushlan's "Conservation and Management of the American Crocodile" (1988), J.A. Kushlan and F.J. Mazzotti's "Population Biology of the American Crocodile" (1989), and F.J. Mazzotti and L.A. Brandt's "Evaluating the Effects of Ground Water Levels on the Reproductive Success of American Crocodiles in Everglades National Park" (1989). These studies and a further assessment of the crocodile sanctuary are discussed in "A Draft Assessment of Recreational Boating and its Potential Impact on Resources Within the Crocodile Sanctuary of Everglades National Park" (1992), by National Park Service employee Skip Snow.

During this period, the National Park Service has observed the crocodile population expand out of the sanctuary, to other areas such as Flamingo and Cape Sable, which experience high visitor use. During numerous human/crocodile encounters in the part, it appears that nonaggressive human activity has little affect on crocodiles except during the reproductive months from nest preparation to the dispersal of hatchlings. Accordingly, the Service is proposing to delete existing § 7.45(g)(4) which closed specific areas and instead protect the species with proposed §§ 7.45(c)(1) and (f)(1). These proposed paragraphs would provide the Superintendent with a practical method to provide for the protection of this species, by easily closing or limiting access to areas the crocodile migrates to, or by opening an area the crocodile no longer uses.

It is anticipated that the Superintendent will immediately use this authority to close the areas of Snag Bay, Joe Bay, Mud Creek, Mud Bay, East Creek, East Creek Ponds, and Taylor River from March 1 to November 15 of each year, during the stages of nest preparation, nesting, and hatchling dispersal. Currently, those areas are closed to all entry and the proposed regulation would allow for those areas to again be open to public use from mid-November through February. The areas of Little Madeira Bay and the creeks inland from the northern shoreline of Long Sound would be opened year-round. Davis Creek and the mainland shoreline from Terrapin Point eastward to Highway U.S. 1 are expected to remain closed year round. The exact areas and the specific time periods of this closure may be altered to provide the protection necessary for the crocodile. Additionally, some of these previously closed waters would be subject to other limitations, such as "no wake zones" or the prohibition against the use of motors in areas of wilderness designation.

The Service proposes to add a new paragraph at § 7.45(f)(4) which prohibits the use of motorized vessels within the accessible marine wilderness areas. Most of these waters have been closed to motorized vessels based on wilderness designation (established by Pub. L. 95–625) but these closed areas have not been specifically codified. Other areas have enjoyed additional protection by virtue of the regulations designed to protect the crocodile population. While the need to manage closures to protect wildlife requires flexibility, the closure of the marine wilderness areas can, and the Service believes should, be accomplished through a specific regulation. The waters of Mud, Bear, East Fox, Middle Fox, Little Fox, and Gator Lakes, Homestead Canal, Cuthbert, Henry, Little Henry, and Long Lakes, the Lungs Lakes, Alligator Creek form the shoreline of Garfield Bight, all associated small lakes on Cape Sable inland from Lake Ingraham, and all of the creeks and inland lakes north of Long Sound, Joe Bay, and Little Madeira Bay except those ponds and lakes associated with Taylor River have been closed in the past to all vessels or to motorized vessels and are proposed to remain closed to motorized vessels. The waters of Monroe Lake, Oyster Creek, Middle Lake, and Seven Palm Lake were included in the wilderness plan approved in Pub. L. 95–625 but have not been posted as closed to motorized vessels in the past. The National Park Service proposes to close these waters to motorized vessels through these regulations.

The freshwater lakes and ponds immediately adjacent to the park's visitor contact stations and two other ponds have long been closed, by the authority of the Superintendent, to all vessels. This has helped provide the wildlife with a relatively undisturbed habitat at areas where a large number of visitors can readily observe them. Since these areas will not change, the Service wishes to provide these areas with the protection offered by specific regulations. The Service proposes, at § 7.45(f)(2), to prohibit the use of boats at Eco Pond and Mrazek Pond, two locations along the Main Park Road where bird life tends to congregate, and at the ponds around Royal Palm Visitor Center, Parachute Key Visitor Center, and the two lakes at Chekika.

The Service wishes to modify the existing regulation at § 7.45(g)(3) which prohibits motorized vessels from several inland freshwater areas. The proposed regulation, at § 7.45(f)(3), would delete Parachute Key Ponds, Royal Palm Ponds, and Mrazek Pond from this prohibition, since those areas are proposed for inclusion in the paragraph prohibiting all vessel use. Additionally, two small lakes, Tower Lake and Hidden Lake are proposed to be included within this use restriction. Both of these areas are small, easily accessible lakes which are not conducive to frequent use by motorized vessels.

The Service proposes to modify existing regulations limiting the use of motorized vessels on the waters of two small lakes. The present regulations at § 7.45(g)(1) provide the Superintendent with authority to close West Lake and West Lake Pond to the use of all motorized vessels. This regulation also allows the Superintendent to open these two bodies of water to vessels powered by no greater than 5½ horsepower motors. Due to the existence of current industry wide standards, which did not exist at the time the present regulations were drafted, almost all manufacturers build small outboards of 6 horsepower instead of 5½. The Service wishes to revise this paragraph at the proposed § 7.45(f)(6) to allow for the use of motors not to exceed 6 horsepower. This revision still provides for the protection of the resource by preventing motors from being used which are large enough to disturb the fish or bottoms of the lakes. At the same time, this revision would allow for the use of modern motors which meet the intent, but not the definition of the present regulation.

The Service also proposes to modify the existing regulation at § 7.45(f)(1) requiring persons engaged in guide fishing in the park to obtain a park permit. The proposed new paragraph at § 7.45(e)(4) deletes references to obsolete commercial fishing references as well as providing a prohibition against guide fishing without a permit. The Service is also proposing a new § 7.45(e)(12) to limit the number of fish which may be taken by persons engaged in guide fishing within the park. The

Service has received numerous verbal comments by park users complaining that guides frequently keep the allowable bag limit of fish for all of their clients as well as themselves. While the Service does not wish to prevent guides from catching or keeping fish, there does not seem to be any need for guides to keep large numbers of fish on a daily or routine basis for their personal consumption. Further, the Service believes that the primary benefit of a guide within the National Park is to offer a professional service to the visitor, providing the visitor with the opportunity to recreationally enjoy the resources of the park. The Service proposes to allow guides to continue fishing, while at the same time preserving the resource, by limiting the number of fish allowed aboard a guide's vessel to the number of fish legally allowed by the clients on board at the time.

Public Participation

The policy of the Department of Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed special regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in the writing of these regulations: Mark Lewis, Hank Blatt, Rick Dawson and Maureen Finnerty, formerly of Everglades National Park; and Cordell Roy, formerly of Big Cypress National Preserve.

Paperwork Reduction Act

The information collection requirements contained in proposed paragraph (f)(1) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.* and assigned clearance #1024–0026.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

This conclusion is based on the fact that the deletion of obsolete and duplicative regulations will have no economic effect. The fishing regulation changes would be minimal, with no negative impact on fishing-related industries adjacent to Everglades National Park. Lower bag limits will improve the available stock in park waters, and consistency with State rules will avoid confusion among visitors fishing in park waters.

The Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health, and safety. However, this proposed rulemaking does have the potential to affect public access to habitat of the American crocodile, and endangered species. In accordance with the procedural requirements of the National Environmental Policy Act (NEPA) and the Departmental regulations in 516 DM 6, (49 FR 21438), an Environmental Assessment concerning recreational access into the current crocodile sanctuary has been prepared and is undergoing public review.

Pursuant to the section 7 requirements of the Endangered Species Act, the National Park Service has consulted with the U.S. Fish and Wildlife Service regarding the proposed changes in the crocodile sanctuary. The U.S. Fish and Wildlife Service has concurred with these proposals.

List of Subjects in 36 CFR Part 7

National Parks; Reporting and record keeping requirements.

For the reasons set out in the preamble, title 36, chapter I, § 7.45 of the Code of Federal Regulations is proposed to be revised as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 7.45 is revised as follows:

§ 7.45 Everglades National Park.

(a) *Information collection.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.*, and assigned clearance number 1024–0026. This information is being collected to solicit information necessary for the superintendent to issue permits used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

(b) *Prohibited conveyances.* Only hand-propelled vessels may be operated upon those areas of emergent vegetation commonly called marshes, wetlands, or "the glades". Operation of a motorized vessel in such areas is prohibited.

(c) *Closures.* (1) The Superintendent may close an area to all persons, in accordance with section 1.5 of this chapter. Notice of the closing shall be given by the posting of appropriate signs.

(2) Entering any area closed to public entry is prohibited.

(d) *Definitions.* The following definitions shall apply to this section:

(1) The term *ballyhoo* means a member of the genus *Hemiramphus* (family: Exocoetidae).

(2) The term *cast net* means a type of circular falling net, weighted on its periphery, which is thrown and retrieved by hand.

(3) The term *commercial fishing* means the activity of taking or harvesting or attempting to take or harvest any edible or non-edible form of sea life for the purpose of sale or barter.

(4) The term *dipnet* means a hand-held device for obtaining bait, the netting of which is fastened in a frame.

(5) The term *guide fishing* means the activity, by a person, group of people, firm, or corporation, to provide a service for hire to visitors of the park for the purpose of fishing.

(6) The term *hovercraft* means a vessel or craft which is supported by a fan or turbine generated cushion of air.

(7) The term *minnow* means a fish used for bait from the family Cyprinodontidae, Poecilliidae, or Atherinidae.

(8) The term *mojarra* or *goats* means a member of the family Gerreidae.

(9) The term *mullet* means a member of the family Mugilidae.

(10) The term *ornamental tropical fish* means a fish of minimal sport or food value, usually brightly colored, often used for aquarium purposes and which live in close relationship to coral communities, belonging to the families Syngathidae, Apogonidae, Pomacentridae, Scaridae, Blennidae, Callionymidae, Godiidae, Ostraciidae, or Diodontidae.

(11) The term *oyster* means a mollusk of the suborder Ostraecea.

(12) The term *personal watercraft* means a vessel designed to be powered by a water-jet or an enclosed propeller or impeller system, and where persons ride primarily on or behind the vessel, as opposed to inside; sometimes referred to as "thrill craft".

(13) The term *pilchard* means a member of the herring family (Clupeidae), generally used for bait.

(14) The term *pinfish* means a member of the genus *Lagodon* (family: Sparidae).

(15) The term *shrimp* means a member of the invertebrate family Penaeidae.

(16) The term *spiny lobster* (crawfish) means an invertebrate of the genus *Panulirus*.

(e) *Fishing.* Except as otherwise provided in this section or in § 2.3 of this chapter, fishing is governed by applicable State law, including State licensing requirements.

(1) The Superintendent may close an area to all fishing, in accordance with § 1.5 of this chapter. Notice of the closing of the area shall be given by the posting of appropriate signs.

(2) The following described areas are closed to all fishing.

(i) All waters of T. 58 S., R. 37 E., sections 10 through 15, inclusive, measured from Tallahassee meridian and base, in the vicinity of Royal Palm Visitor Center, except Donut or Hidden Lake and Pine Island Lake.

(ii) All waters in T. 54 S., R. 36 E., sections 19, 30, and 31, and in T. 55 S., R. 36 E., sections 6, 7, 18, 19, and 30, measured from Tallahassee meridian and base, in the vicinity of Shark Valley Loop Road from Tamiami Trail south.

(3) Fishing in any area closed to fishing is prohibited.

(4) A person, firm, or corporation engaged in guide fishing in the waters of the park open for this purpose must possess a guide fishing permit issued by the Superintendent and administered under the terms of § 1.6 of this chapter. Guide fishing without a valid permit is prohibited.

(5) Commercial fishing is prohibited.

(6) Except for taking of finfish, shrimp, bait, crabs, and oysters as provided in this section, the taking, possession, or disturbance of any marine life is prohibited.

(7) The taking, possessing, or disturbance of any ornamental tropical fish is prohibited.

(8) Recreational crabbing for stone or blue crabs may be conducted using attended gear only and no more than five (5) traps per person. Persons using traps must remain within one hundred (100) feet of those traps. Unattended gear or use of more than five (5) traps per person is prohibited.

(9) The taking of oysters from the waters of the park is prohibited, except by hand, rake, or tongs, for personal use.

(10) Shrimp, mullet, and bait fish (minnows, pilchards, pinfish, mojarras, ballyhoo or bait mullet (less than 8 inches in total length) may be taken with hook and line, dipnet (not exceeding 3 feet at its widest point) or by cast net, for use as bait or for personal consumption.

(i) No live bait may be taken for the purpose of sale.

(ii) A dipnet or cast net may not be dragged, trawled, or held suspended in the water.

(iii) Mullet taken for personal consumption must meet bag limits specified in paragraph (e)(12) of this section.

(11) Except as provided in this section, no nets, seines, traps, spears, explosives, or other devices for the trapping, catching, taking, harvesting or killing of any edible or nonedible form of marine life, may be placed, used or possessed within the boundaries of the park, except that closely attended hook and line may be used in recreational fishing activities.

(12) Bag Limits:

(i) No person shall take, harvest, or unnecessarily destroy during any one (1) day, or have in his possession at any time, more than:

(A) Ten (10) fish of any one species, excluding bait fish as stated in paragraph (e)(10) of this section.

(B) Twenty (20) fish total, of all species, excluding bait fish as stated in paragraph (e)(10) of this section.

(ii) State regulations for fish species, oysters, and shrimp that are more restrictive than those provided in this section are hereby adopted and supersede the less restrictive provisions of this section.

(iii) A guide fisherman, as stated in paragraph (e)(4) of this section, while engaged in guiding clients, may not have aboard their vessel a greater number of fish than legally allowed by the number of clients aboard their vessel at the time.

(iv) The Superintendent may designate specific bag limits for any other fish species, or may establish limits more restrictive than state law, when necessary to protect the resource, in accordance with § 1.5 of this chapter.

(v) Violating a provision of this section, a State fishing law assimilated, or Superintendent's order adopted, is prohibited.

(13) All fish which do not meet size or species restrictions or which the person chooses not to keep must be returned carefully and immediately to the water. The intentional disturbing of the fish, other than releasing in an expeditious manner, is prohibited. The tagging, marking, fin clipping, mutilation or other disturbance to a fish, prior to release is prohibited without written authorization from the Superintendent.

(14) Fish may not be fileted while on or adjacent to the waters of the park, except that:

(i) Persons may possess up to four (4) filets per person while eating or preparing the filets for immediate cooking and consumption at designated campsites or on board vessels equipped with cooking facilities.

(ii) Persons may possess a greater number of filets while at the designated fish cleaning facility located at Flamingo.

(15) Nets, gear, and fish or other edible or non-edible forms of sea life that are legally possessed in State waters but are illegally possessed in park waters may be transported through the park only over Indian Key Pass, Sand Fly Pass, Rabbit Key Pass, Chokoloskee Pass and across Chokoloskee Bay along the most direct route to or from Everglades City or Chokoloskee Island en route to or from Fakahatchee Bay.

(i) Boats traveling through these passageways with such nets, gear, fish, or other edible products of the sea must remain in transit unless disabled or unless weather and sea conditions combine to make safe passage obviously impossible, at which time the boats may be anchored to await assistance or better conditions.

(ii) Possession of nets, gear, fish, or other edible products of the sea, not otherwise permitted in this section, in waters not specified in paragraph (e)(15) of this section is prohibited.

(f) *Boating.* (1) The Superintendent may close an area to all vessels or to all motorized vessels, or to all motors greater than a specified horsepower or the Superintendent may impose other restrictions as necessary, in accordance with § 1.5 of this chapter. Notice of the closing of the area shall be given by the posting of appropriate signs.

(2) The following areas are closed to all vessels:

(i) Sections 19, 30, 31, Township 54 South, Range 36 East and sections 6, 7, 18, 19, and 30, Township 55 South, Range 36 East, bordering the Shark Valley Loop Road from the Tamiami Trail south.

(ii) Eco Pond, Mrazek Pond, Royal Palm Ponds except for Hidden Lake, Parachute Key Ponds north of the Main Park Road, and Lake Chekika.

(3) The following inland fresh water areas are closed to the use of motorized vessels: Coot Bay Pond, Nine Mile Pond, Paurotis Pond, Sweetbay Pond, Big Ficus Pond, Sisal Pond, Pine Glade Lake, Long Pine Key Lake, Tower Lake, Hidden Lake, Pine Island Pond, and L-67 canal.

(4) The following coastal waters are designated as wilderness and are closed to the use of motorized vessels: Mud, Bear, East Fox, Middle Fox, Little Fox, and Gator Lakes; Homestead Canal; all associated small lakes on Cape Sable inland from Lake Ingraham; Cuthbert, Henry, Little Henry, Seven Palm,

Middle, Monroe, Long, and the Lungs Lakes; Alligator Creek from the shoreline of Garfield Bight to West Lake; all inland creeks and lakes north of Long Sound, Joe Bay, and Little Madeira Bay except those ponds and lakes associated with Taylor River.

(5) Except to effect a rescue, or unless otherwise officially authorized, no person shall land on keys of Florida Bay except those marked by signs denoting the area open, nor on the mainland shorelines from Terrapin Point eastward to U.S. Highway 1, including the shores of all inland bays and waters and those shorelines contiguous with Long Sound, Little Blackwater Sound, and Blackwater Sound.

(6) West Lake Pond and West Lake shall be closed to all vessels during those periods, determined by the Superintendent, that these areas are being used by feeding birds. At all other times, these areas shall be open only to hand-propelled vessels or to Class A motorboats powered by motors not to exceed 6 horsepower that can be launched by hand. Notice of closing shall be given by the posting of appropriate signs at these areas.

(7) Operating, launching or using a motorized vessel in any area closed to the use of motorized vessels is prohibited, except that vessels with motors are not prohibited if the motor(s) are removed from the transom and gunnels of the vessel and stored so as to be temporarily inoperable.

(8) Launching, operating, or using a vessel in any area closed to vessels is prohibited.

(9) Launching, operating or riding behind a personal watercraft is prohibited in the park.

(10) Launching, operating, or using a hovercraft is prohibited in the park.

(11) Vessels used as living quarters shall not remain in or be operated in the waters of the Park for more than 14 days without a permit issued by the Superintendent. Said permit will prescribe anchorage location, length of stay, sanitary requirements and such other conditions as considered necessary.

Dated: November 19, 1992.

Jennifer A. Salisbury,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 92-30916 Filed 12-18-92; 8:45 am]

BILLING CODE 4310-70-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PP Docket No. 92-234; DA 92-1692]

Inquiry into Encryption Technology for Satellite Cable Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Extension of reply comment deadline.

SUMMARY: This action extends the deadline for filing comments in PP Docket No. 92-234 (57 FR 53307, November 9, 1992), an inquiry into encryption technology for satellite cable programming. The new reply comment deadline is January 22, 1993.

DATES: Comments must be filed on or before December 24, 1992 and reply comments must be filed on or before January 22, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION:

Order Extending Deadline for Filing Reply Comments

Adopted: December 11, 1992;
Released: December 14, 1992.

Comment Date: December 24, 1992.
Reply Comment Date: January 22, 1993.

By the Chief, Office of Plans and Policy.

1. The Commission has received a "Request for Extension of Time for Reply Comments" in the above-captioned proceeding. The Satellite Broadcasting and Communications Association (SBCA) filed this request on November 24, 1992, asking for an extension from January 8, 1993 to January 25, 1993.

2. In support of its request, SBCA states that this proceeding, "addresses an issue of substantial interest to the satellite industry" and suggests that the reply comment interval is "a sufficiently compressed period so as to create a serious burden on the parties to the NOI who wish to review carefully the comments filed and prepare their reply comments diligently." Good cause for an extension having been shown, *It is ordered* that the deadline for reply comments in PP Docket No. 92-234 is extended to January 22, 1993. This additional filing time will enhance the ability of commenters in general, and SBCA in particular, to obtain and analyze pleadings in order to submit reply comments that include comprehensive analyses of the issues raised in the Commission's *Notice of Inquiry* in PP Docket No. 92-234. This action is taken pursuant to section 4(i) of the Communications Act of 1934, as amended, under authority delegated to the Chief, Office of Plans and Policy by § 0.271 of the Commission's Rules, 47 CFR 0.271.

Federal Communications Commission.

Robert Pepper,

Chief, Office of Plans and Policy.

[FR Doc. 92-30872 Filed 12-18-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 92-262; FCC 92-540]

Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 (Buy-Through Prohibition)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC invites comment on interpretation and implementation of the buy-through prohibition of section 623(b)(8) of the Communications Act of 1934, as amended, 47 U.S.C. 543(b)(8). This notice is prompted by section 3 of the Cable Television Consumer Protection and Competition Act of 1992, which became law on October 5, 1992, adding this prohibition to the Communications Act. This action is intended to implement the 1992 Act.

DATES: Comments must be submitted on or before January 13, 1993, and reply comments on or before January 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barrett L. Brick, Cable Television Branch, Mass Media Bureau, (202) 632-7480.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in MM Docket No. 92-262, adopted December 10, 1992 and released on December 11, 1992.

The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422.

Summary of Notice of Proposed Rulemaking

1. In this notice of proposed rulemaking, the Commission seeks comment on the appropriate interpretation of the buy-through prohibitions of the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102–385, 106 Stat. 1460 (1992) (1992 Cable Act). The 1992 Cable Act prohibit cable operators from requiring subscribers to purchase any tier or service, other than the basic service tier, as a prerequisite for purchasing programming on a per channel or per program basis. Certain exceptions to the prohibition are set forth, and the Commission is granted waiver authority under certain circumstances.

2. In order to fashion effective regulations, the Commission seeks information on the current state of industry capabilities to comply with the statute. The Commission seeks information on how widespread various kinds of channel access-relevant equipment are, and how, if at all, particular equipment relates to other system characteristics.

3. The Commission seeks comment upon the types of equipment which would present technological limitations upon compliance with the statute, other than the lack of addressable converter boxes, particularly in the context of cable systems serving multiple community units of varying addressable capabilities, or varying levels of service.

4. The Commission seeks comment on how to implement that portion of the 1992 Cable Act which prohibits per channel and per program price discrimination between basic service tier subscribers and other subscribers, including how to define such discrimination and to determine its existence. The Commission also seeks comment on how to apply the statute's prohibition of evasions in this area, particularly with regard to retiering practices.

5. The 1992 Cable Act provides cable operators who, by reason of non-addressability or other technological limitation, cannot comply with the buy-through prohibition, a 10-year period to come into compliance. The Commission believes that this exemption encompasses non-addressable systems, and seeks comment upon this interpretation. The 1992 Cable Act also provides that should the limitation be eliminated, however, the exemption ceases. The Commission seeks comment on the nature and scope of modifications that would remove a system from the exemption's scope, including modifications to be made over a long period of time, and whether simple or inexpensive modifications can or should be required.

6. The 1992 Cable Act grants the Commission authority to waive the buy-through prohibitions if enforcement would cause a significant rate increase, and if waiver is in the public interest. The Commission seeks comment on what regulations or guidelines, if any, for evaluating such waiver requests should be promulgated at this time. The Commission also seeks comment upon whether cable systems constructed during the 10-year exception period can or must be required to comply immediately with the buy-through prohibition.

7. Finally, the Commission seeks comment upon how to accomplish the statute's directive to design regulations to reduce administrative burdens and costs of compliance for cable systems serving 1000 or fewer subscribers.

Initial Regulatory Flexibility Analysis

8. *Reason for Action:* This proceeding is being initiated to seek comments on the best way to implement section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, relating to prohibitions on buy-through marketing practices.

9. *Objective of this Action:* The Commission's goal is to provide notice and opportunity to comment to members of the public regarding efficacious implementation of section 3(a) of the 1992 Cable Act.

10. *Legal Basis:* Authority for this proposed rule making is contained in sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), and section 3(a) of the Cable Consumer Protection and Competition Act of 1992, Pub. L. 102–385 (1992).

11. *Number and Type of Small Entities Affected by the Proposed Rules:* Approximately 30,000 existing cable systems of all sizes may be affected by the proposals contained in this notice.

12. *Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rules:* The Commission is asking for comment on what information should be reported and maintained in order to ensure compliance with the Act.

13. *Federal Rules that Overlap, Duplicate, or Conflict with the Rules:* None.

14. *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objective of the Action:* None. The proceeding does, however, seek comment on how to minimize compliance burdens, if any, on cable systems serving 1000 or fewer subscribers.

15. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

16. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 13, 1993, and reply comments on or before January 28, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

17. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.* (1981)).

18. For further information concerning this proceeding, contact Barrett L. Brick, Cable Television Branch, Video Services Division, Mass Media Bureau (202) 632–7480.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-30876 Filed 12-18-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

Defense Federal Acquisition Regulation Supplement; Joint Ventures

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Defense Acquisition Regulations (DAR) Council published a proposed rule with request for comments on December 1, 1992 (57 FR 56895). The rule proposed amending parts 219 and 252 of the Defense FAR Supplement to incorporate DOD policy on eligibility of joint ventures including small disadvantaged businesses for small disadvantaged business evaluation and award preferences. The original date for receipt of comments expires on December 31, 1992. This document extends the comment period based on numerous requests from the public.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 31, 1992, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062. FAX (703) 697-9845. Please cite DAR Case 91-054 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697-7266.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 92-30913 Filed 12-18-92; 8:45 am]

BILLING CODE 3810-01-M

OFFICE OF MANAGEMENT AND BUDGET

48 CFR Parts 9903, 9905

Office of Federal Procurement Policy; Cost Accounting Standards Board; Application of Cost Accounting Standards Board Regulations to Educational Institutions

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Cost Accounting Standards Board (CASB) invites public comments on proposed amendments to the regulatory provisions contained in chapter 99 of title 48. The proposed amendments would apply to educational institutions receiving a negotiated Federal contract or subcontract award, in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers which are already subject to CASB regulations), and require that such educational institutions comply with certain proposed CASB regulations and Cost Accounting Standards (CAS).

DATES: Requests for a copy of the Board's proposed rule and disclosure statement must be in writing and must be received by February 19, 1993. Comments on the proposed rule must be in writing and must be received by March 5, 1993.

Educational institutions that previously requested a copy of the Board's Advance Notice of Proposed Rulemaking (ANPRM) on this subject are already on the Board's mailing list and will automatically receive a copy of this NPRM.

ADDRESSES: Requests for a copy of the proposed rule and disclosure statement, or comments upon their contents, should be addressed to Mr. Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street NW., room 9001, Washington, DC 20503. Attn: CASB Docket No. 91-07.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone 202-395-3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules, regulations and Standards are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. § 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking.
3. Promulgate a Notice of Proposed Rulemaking.
4. Promulgate a Final Rule.

The proposal being released today represents step three of the four step process.

B. Summary Background and Report

Prior Promulgations: Based on recent information that some institutions of higher education were improperly allocating indirect costs to Federal programs, the Board initiated a case to consider issues related to the application of CAS to educational institutions. On October 8, 1991, the CASB published a Notice in the **Federal Register**, 56 FR 50737, requesting public comments from interested parties concerning a Staff Discussion Paper on the topic of applying CAS to educational institutions. On June 2, 1992, after consideration of the public comments received in response to the Staff Discussion Paper, the CASB published an ANPRM in the **Federal Register**, 57 FR 23189, requesting public comments from interested parties concerning proposed amendments to Chapter 99 of Title 48 that, when issued as a final rule, would require educational institutions to comply with certain specified CASB regulations and Standards.

The Board and the CASB staff express their appreciation for the constructive suggestions and criticisms provided by the commenters, particularly those offered to clarify and improve the proposed language in Parts 9903 and 9905, and the content of the proposed Disclosure Statement.

After consideration of the comments received, the Board continues to believe that the application of selected CAS provisions, as set forth in the NPRM, will improve the cost accounting practices followed by educational institutions when estimating, accumulating and reporting costs deemed allocable to Federal contracts, and that the costs of implementation will be minimal. Costs associated with the initial preparation of a Disclosure

Statement and subsequent efforts to ensure compliance with CAS should be offset by comparable reductions in the administrative costs associated with the establishment of Memorandums of Understandings (MOUs) and related auditors' inquiries as evidenced by the comments received from a major university on this topic. The use of the Disclosure Statement being proposed should reduce the potential for disagreements between the contracting parties regarding the institution's cost accounting practices. Thus, the Board believes the potential benefits to the audit, negotiation and general contract administration processes accruing from the increase in visibility and in uniformity of cost accounting treatment will be substantial and will greatly outweigh any added costs.

Proposed Amendments: A brief description of the proposed amendments follows:

Part 9903, Contract Coverage: In Subpart 9903.2, CAS Program Requirements, existing subparagraph 9903.201–1(b)(10), exempting educational institutions from CAS, is deleted. Subsections 9903.201–1 and 9903–201–2 are amended to identify which Standards shall continue to be applied to contractors other than educational institutions, and a new paragraph (9903.201–2(c)) is added to establish the unique CAS requirements to be applied to educational institutions. Subsection 9903.201–3 is amended to conform the prescribed solicitation notice for use by educational institutions. Subsection 9903.201–4 is amended to establish unique contract clause language for inclusion in contracts awarded to educational institutions. Section 9903.202 is amended to prescribe the Disclosure Statement to be used by educational institutions. In Subpart 9903.3, Section 9903.301 is amended to incorporate cross-references to definitions for certain new and existing terms. Section 9903.304 is amended to clarify applicability to educational institutions.

Part 9905, Cost Accounting Standards For Educational Institutions: A new Part 9905 is added to incorporate four new Cost Accounting Standards to be applied to educational institutions, i.e., one requiring consistency in estimating, accumulating and reporting costs (Section 9903.501), one requiring consistency in allocating costs (Section 9903.502), one requiring contractor identification of specific unallowable costs (Section 9903.505), and one requiring consistency in the selection and use of a cost accounting period (Section 9903.506).

Summary Description of Proposed CAS Coverage: The proposed amendments generally require that a CAS contract clause be incorporated in any negotiated Federal contract or subcontract awarded, in excess of $500,000, to an educational institution. An institution receiving a CAS-covered award will be contractually required to (1) consistently follow its cost accounting practices when estimating (proposed costs), accumulating, and reporting costs under that and any subsequent CAS-covered award(s), (2) consistently allocate costs incurred for the same purpose, (3) identify costs that are not reimbursable as allowable costs, (4) consistently use the same cost accounting period for purposes of estimating, accumulating and reporting costs, and (5) formally disclose, in writing, and consistently follow its disclosed cost accounting practices, when the institution:

(a) receives a CAS-covered contract or subcontract of $25 million, or more, during the current fiscal year,

(b) received more than $25 million of CAS-covered contracts and subcontracts in a prior fiscal year, or

(c) receives a CAS-covered contract or subcontract of $500,000, or more, *and* is listed in Exhibit A of OMB Circular A–21.

Institutions, or a business unit of an institution, receiving a CAS-covered award in excess of $500,000 that did not meet one of the above threshold criteria may be contractually required to (1) consistently follow their established cost accounting practices when estimating (proposed costs), accumulating, and reporting costs under that and any subsequent CAS-covered award(s), (2) consistently allocate costs incurred for the same purpose, and (3) identify costs that are not reimbursable as allowable costs. A Disclosure Statement would only be required if a different business unit of the institution otherwise met the threshold criteria listed above.

The newly proposed higher thresholds for "Modified Coverage" and the proposed inclusion of proposed CAS 9905.505 under "Modified Coverage" is based on a similar CASB proposal, for application to all CAS-covered contractors, that was promulgated in the **Federal Register**, 57 FR 47438 (Oct. 16, 1992).

The proposed contract clauses further provide for price adjustments in the event the institution changes its established or disclosed cost accounting practices, fails to consistently follow established or disclosed cost accounting practices, or fails to comply with applicable Standards. Proposed parts 9903, as amended, and 9905 will apply to educational institutions.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 92–30925 Filed 12–18–92; 8:45 am]

BILLING CODE 3110–01–M

Notices

Federal Register
Vol. 57, No. 245
Monday, December 21, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

List of Performance Review Board Members

SUMMARY: ACTION publishes the revised list of positions which comprise the Performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Beaulieu, Director of Personnel, ACTION, 1100 Vermont Avenue, NW., room 5101, Washington, DC 20525, (202) 606–5263.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA) requires that each agency establish one or more Performance Review Boards to review and evaluate the initial appraisal of a senior executive's performance and to make recommendations to the appointing authority concerning the performance of the senior executive and to make recommendations for bonuses.

The incumbents of the following positions will serve as members of the ACTION Performance Review Board.

1. Deputy Director—Chairman
2. Associate Director for Management and Budget
3. Commissioner, Federal Property Asset Management Service, General Services Administration
4. Comptroller
5. Deputy Assistant Secretary for Administration, Department of Transportation

Issued in Washington, DC on December 15, 1992.

Jane A. Kenny,

Director.

[FR Doc. 92–30900 Filed 12–18–92; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92–187–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits, Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of October 1992. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For copies of the list or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month the Veterinary Biologics section of Biotechnology, Biologics and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of October 1992. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 16th day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–30905 Filed 12–18–92; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Eastern Region; Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, and Wisconsin; Legal Notice of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On April 17, 1992, the Eastern Region published a list of newspapers in which decisions would be published in accordance with 36 CFR 217.5(d). The regulation requires that this list be updated twice annually.

The April 17, 1992, Eastern Region list will remain unchanged. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

FOR FURTHER INFORMATION CONTACT: Corbin L. Newman, Jr., Regional Appeals Coordinator, Eastern Region, Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, Area Code 414–297–3181.

Dated: November 24, 1992.

James R. Jordan,

Deputy Regional Forester Resources.

[FR Doc. 92–30862 Filed 12–18–92; 8:45 am]

BILLING CODE 3410–11–M

Spirit Fire Recovery Project, Willamette National Forest, Lane County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service will prepare an environmental impact statement (EIS) on a proposal to conduct resource recovery projects which include salvage of fire-killed and associated green standing trees, reforestation, fuels reduction, and road construction within the High Spirit fire area. The High Spirit fire burned approximately 140 acres of predominately true-fir and mountain hemlock forest in August of 1992. Within the fire area approximately 100 acres were totally killed and an estimated 40 acres were underburned or partially killed. The Spirit Fire Recovery Project EIS will be consistent with the Willamette National Forest Land and Resource Management Plan (Forest Plan), and tier to the final EIS for spotted owl habitat management recently prepared by the Forest Service.

The legal description of the project area is: Sections 13, 14, 23 and 24, T.21S., R.5E., W.M. The project area is entirely within the 4,970 acre Koch parcel of the Waldo Roadless Area identified in Appendix C of the Forest Plan. This inventoried roadless area is currently modified by recent road construction within the project area. The proposed project will be implemented during fiscal years 1993 and 1994.

DATES: Comments concerning the scope of the analysis should be received in writing by January 30, 1993.

ADDRESSES: Send written comments to Robert L. Barstad, District Ranger, Oakridge Ranger District, 46375 Highway 58, Westfir, Oregon 97492.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed actions and EIS to Leon Mork, Acting Plans Assistant, or Al Brown, Project Coordinator, phone: (503) 782–2291.

SUPPLEMENTARY INFORMATION: The resource recovery project will propose the following projects: Salvage of fire-killed and associated green standing trees, reforestation, fuels reduction, and road construction.

The EIS will document decisions on which, if any, of the above proposed projects will be implemented within the 140 acres burned during the High Spirit fire. The proposed project area is located on the Oakridge Ranger District in the Ranger Creek drainage. The fire area is located approximately 15 miles east of the City of Oakridge, Oregon and approximately 60 miles southeast of Eugene, Oregon.

Salvage of fire-killed and harvest of green standing trees may occur on some portion of the fire affected area at an intensity yet to be determined. Implementation of selected activities will occur during fiscal year 1993 and 1994.

The EIS will develop a range of management alternatives for fire recovery in the High Spirit fire area. Approximately 5 acres of the fire area is within a Northern Spotted Owl Habitat Conservation Area (HCA 0–10) as designated by the Final EIS on Management of the Northern Spotted Owl in the National Forests, recently approved. In addition, the Spirit Fire Recovery Project and all proposed connected actions will be in compliance with the same for that affected area. The fire recovery will follow standards and guidelines contained in the Willamette National Forest Land and Resource Management Plan and may modify a limited number of these standards and guidelines which are pertinent to or necessary for fire recovery activities in the fire affected portion of HCA 0–10.

Initial scoping began on September 21, 1992. Preliminary analysis and alternative formulation are currently being conducted. The Forest Service will be seeking additional information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the proposed project. Additional input will be used to help identify significant issues and develop alternatives. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identification of potential issues;
2. Identification of issues to be analyzed in depth;
3. Elimination of insignificant issues or those which have been covered by a relevant previous environment process;
4. Exploration of additional alternatives based on the issues identified during the scoping process; and
5. Identification of potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

The following significant issues have been identified:

1. Roadless Area Development. The construction of permanent or temporary roads to access fire damaged timber would continue to modify the former undeveloped character of the Koch parcel of the Waldo Roadless Area.
2. Reforestation/Plantation Management. Salvage may delay reforestation by reducing shade, damaging natural regeneration, or creating soil disturbance. Reforestation may also be delayed through competition from beargrass and sedge if areas with particularly harsh microclimate conditions and nutrient deficient soils are not immediately planted with seedlings.
3. Soils and Long Term Site Productivity. Salvage may affect soil organic material sources. Removal of trees may also affect material which stabilizes surface erosion. Long-term soil moisture and nutrient reservoirs could be altered.
4. Timber. Delay in salvaging fire-killed timber may allow deterioration processes from insect and fungi activity to occur reducing product value, as well as increasing the potential for reburn of the area.

There are no permits or licenses required to implement any of the proposed activities.

Analysis of the effects of prescriptions for resource recovery will be done in consultation with the U.S. Fish and Wildlife Service (USFWS). The Willamette National Forest will serve as lead agency in this analysis with the Oregon Department of Fish and Wildlife and the USFWS as potential cooperating agencies.

The Willamette National Forest invites written comments and suggestions on the scope of analysis and concerns. It is estimated that a draft EIS will be ready for review in March of 1993. The comment period on the draft EIS will be 45 days from the date the

Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed in June of 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the Spirit Fire Recovery Project. Darrel L. Kenops, Forest Supervisor, is the Responsible Official. As the Responsible Official, he will decide whether to implement the project. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: December 11, 1992.

Robert L. Leonard,

Acting Forest Supervisor.

[FR Doc. 92-30851 Filed 12-18-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: State of Connecticut

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated as $188,867 in Federal funds, and a minimum of $33,329 in non-Federal (cost sharing) contributions, from May 1, 1993 to April 30, 1994. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Connecticut SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDC funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDC will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&%TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with QMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards. False information on the application can be grounds for denying or terminating funding.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF–LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for application is January 22, 1993. Applications must be postmarked on or before January 22, 1993.

ADDRESSES: The mailing address for submission is: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, rm. 3720, New York, New York 10278.

Area Code/Telephone Number: (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: John F. Iglehart, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Dated: December 14, 1992.

John F. Iglehart,

Regional Director, New York Regional Office.

[FR Doc. 92–30881 Filed 12–18–92; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

[Docket No. 920933–2233]

RIN 0693–AB06

Approval of Federal Information Processing Standard (FIPS) 178, Video Teleconferencing Services at 56 to 1,920 KB/S

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved a new standard, which will be published as FIPS Publication 178. The specifications for this standard are International Telegraph and Telephone Consultative Committee (CCITT) Recommendations H.320, H.221, H.242, H.261, and H.230.

SUMMARY: On June 26, 1991 (56 FR 29264), a notice was published in the **Federal Register** that video teleconferencing standards were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NIST and the National Communications System (NCS). On the basis of this review, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW. Washington, DC 20230.

This FIPS contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective June 1, 1993.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications portions, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Rekstad, National Communications System, 701 South Court House Road, Arlington, VA 22204–2198, Telephone (703) 692–2124.

Dated: December 11, 1992.

John W. Lyons,

Director.

Federal Information Processing Standards Publication 178

(Date)

Announcing the Standard for Video Teleconferencing Services at 56 to 1,920 KB/S

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Video Teleconferencing Services at 56 to 1,920 kb/s (FIPS PUB 178).

2. Category. Telecommunications Standards, Video Teleconferencing.

3. Explanation. This standard, by adoption of International Telegraph and Telephone Consultative Committee (CCITT) Recommendations H.320, H.221, H.242, H.261, and H.230, defines the specifications for video teleconferencing and video telephony systems.

This document provides Federal departments and agencies a comprehensive description of the interoperability criteria for audiovisual systems used in video teleconferencing and videophone applications.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. National Communications System, Office of Technology and Standards.

6. Cross Index. The recommendations listed below are adopted and referenced by this standard.

a. CCITT Recommendation H.320, Narrow-band Visual Telephone Systems and Terminal Equipment, 1990.

b. CCITT Recommendation H.221, Frame Structure for a 64 to 1,920 kbit/s Channel in Audiovisual Teleservices, 1990.

c. CCITT Recommendation H.242, System for Establishing Communication Between Audiovisual Terminals Using Digital Channels up to 2 Mbit/s, 1990.

d. CCITT Recommendation H.261, Video Codec for Audiovisual Services at p×64 kbit/s, 1990.

e. CCITT Recommendation H.230, Frame Synchronous Control and Indication Signals for Audiovisual Systems, 1990.

7. Related Documents. a. Federal Information Resources Management Regulations subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

The standards listed below are for information only.

b. ANSI T1.306–1990, American National Standard for Telecommunications—Digital Processing of Audio Signals—Algorithm and Line Format for Transmission of 7 Khz Audio Signals at 64/56 kbit/s.

c. ANSI T1.314–1991, American National Standard for Telecommunications—Video Coder/Decoder for Audiovisual Services at 56 to 1,536 kbit/s.

d. CCITT Proposed Recommendation AV.253, Audio coding at 24/32 kbit/s.

e. CCITT Recommendation G.711, Pulse Code Modulation (PCM) of Voice Frequencies, (1989).

f. CCITT Recommendation G.722, 7 kHz Audio-coding within 64 kbit/s, (1989).

g. CCITT Recommendation G.725, System Aspects for the Use of the 7 kHz Audio Codec within 64 kbit/s, (1989).

h. Proposed CCITT Recommendation G.728, Speech coding at 16 kbit/s.

i. CCITT Recommendation G.821, Error Performance of an International Digital Connection Forming Part of an Integrated Services Digital Network, (1989).

j. CCITT Recommendation H.200, Framework for Recommendations for Audiovisual Services, (1989).

k. CCITT Recommendation I.464, Multiplexing, Rate Adaption and Support of Existing Interfaces for Restricted 64 kbit/s Transfer Capability, (1989).

l. CCITT Recommendation T.35, Procedure for the Allocation of CCITT Member's Codes, (1989).

m. CCITT Recommendation V.120, Support of an ISDN of Data Terminal Equipment with V-Series Type Interfaces with Provision for Statistical Multiplexing.

n. CCITT Recommendation V.35, Data Transmission at 48 Kilobits Per Second Using 60–108 kHz Group Band Circuits, (1989).

o. Military Standard 188–131, Interoperability and Performance Standard for Video Teleconferencing.

8. Abbreviations and Definitions. The abbreviations and definitions contained in this section are for terms contained in this document, and documents referenced by this document.

ANSI	American National Standards Institute.
BAS	Bit-Rate Allocation Signal.
BCH	Bose-ChaudhuriHocquenghem.
C&I	Control & Indication.
CBP	Coded-Block Pattern.
CCIR	International Radio Consultative Committee.
CCITT	International Telegraph and Telephone Consultative Committee.
CIF	Common Intermediate Format.
CODEC	Coder/Decoder.
CRC	Cyclic Redundancy Check.
DCT	Discrete Cosine Transform.
ECS	Encryption Control Signal.
EOB	End of Block.
FAS	Frame Alignment Signal.
FAW	Frame Alignment Word.
FIL	Loop Filter.
FLC	Fixed Length Code.
GBSC	Group of Blocks Start Code.
GEI	GOB Extra Insertion information.
GN	Group Number.
GOB	Group of Blocks.
GQUANT	GOB Quantizer information.
GSPARE	GOB Spare information.
HRD	Hypothetical Reference Decoder.
HSD	High-Speed Data.
IDCT	Inverse Discrete Cosine Transform.
INTER	Inter-picture prediction.
INTRA	Intrapicture prediction.
ISDN	Integrated Services Digital Network.
LSD	Low-Speed Data.
MB	Macroblock.
MBA	Macroblock Address.
MBE	Multiple Byte Extension.
MC	Motion Compensation.
MCU	Multipoint Control Unit.
MF	Multiframe.
MLP	Multilevel Protocol.
MMI	Man-Machine Interface.
MPI	Minimum Picture Interval.
MQUANT	Macroblock Quantizer.
MTYPE	Macroblock Type information.
MVD	Motion Vector Data.
PEI	Picture Extra Insertion information.
PSC	Picture Start Code.
PSPARE	Picture Spare information.
PTYPE	Picture Type information.
QCIF	Quarter-CIF.
QUANT	Quantizer.
REC	Reconstruction level.
SBE	Single Byte Extension.
SC	Service Channel.
SMF	Sub-Multiframe.
TCOEFF	Transform Coefficient.
TEA	Terminal Equipment Alarm.
TR	Temporal Reference.
TS	Time Slot.
VLC	Variable Length Code.

BAS: Bit-rate Allocation Signal. Bit position within the frame structure of H.221 to transmit, e.g. commands, control and indication signals, capabilities.

C&I: End-to-end signalling between terminals consisting of "control" which causes a state change in the receiver and 'indication' which provides for information as to the functioning of the system, see also H.230.

Data Port: Input/output gate for the user data transmitted within Service Channel or sub-channels according to H.221.

FAS: Frame Alignment Signal. Bit position within the frame structure of H.221 to provide a means to achieve and maintain synchronization between multiple channels, and another system.

Lip Synchronization: Operation to provide feeling that speaking motion of the displayed person is synchronized with the voice the person makes.

In-band Signalling: Signalling via BAS of the H.221 frame structure.

MCU (Multipoint Control Unit): A piece of equipment located in a node of the network or in a terminal which receives several channels from access ports and, according to certain criterions, processes audiovisual signals and distributes them to the connected channels.

MMI: Man-machine interface between user and terminal/system which consists of a physical section (electro-acoustic, electro-optic transducer, keys, * * *) and a logical section

dealing with functional operation states.

Narrow-band: Bit rates ranging from 56 kb/s to 1,920 kb/s. This channel capacity may be provided as a single B/H0/H11/H12 channel or multiple B/H0 channels in ISDN.

Outband Signalling: Signalling via a channel not being part of the B/H0/H11/H12 channel (due to I.400-Series Recommendations of CCITT).

Visual Telephone Services: A group of audiovisual services including videophone defined in F.721 and videoconferencing to be defined in H.200/AV.112.

9. Objectives. The objective of this standard is to improve the Federal acquisition process by providing Federal departments and agencies a comprehensive, authoritative source for video teleconferencing terminals used in video teleconferencing and videophone applications.

10. Applicability. This standard is intended to assure interoperability among Federal video teleconferencing and videophone systems employing video codecs at rates between 56 kb/s and 1,920 kb/s.

This standard shall be used by all Federal departments and agencies in the design and procurement of video teleconferencing and videophone systems. This standard is mandatory only for those audiovisual systems operating at rates between 56 kb/s and 1,920 kb/s. The standard shall be used in the planning, design, and procurement, including lease and purchase, of all new video communications systems that utilize video codecs.

Recommendation H.261 specifies service from 64 kb/s through 1,920 kb/s, and technically equivalent ANSI standard T1. 314–1991 specifies service from 56 kb/s through 1,536 kb/s. To avoid confusion on applications within the Federal Government involving both national and international interoperability, this standard encompasses both ranges of data rates to specify service from 56 kb/s through 1,920 kb/s. It should be noted that most standard data networks in the United States carry data from 56 kb/s to 1,536 kb/s.

In an Integrated Services Digital Network (ISDN), the overall transmission channel may consist of 1 to 6 B (64 kb/s channels, 1 to 4 HO (384 kb/s) channels, an H10 (1,472 kb/s) channel, or an H11 (1,536 kb/s) channel. The framed video signal can also be carried on other switched or dedicated digital transmission facilities, such as 1 to 6 56 kb/s connections, a DS1 connection, or a fractional DS1 connection.

The technical parameters of this document may be exceeded in order to satisfy certain specific requirements, provided that interoperability is maintained. That is, the capability to incorporate features such as additional standard and nonstandard interfaces is not precluded.

Neither this nor any other standard in high technology fields such as telecommunications can be considered complete and ageless. Periodic revisions will be made as required.

The standard is not intended to hasten the obsolescence of equipment currently existing in the Federal inventory; nor is it intended to provide systems engineering or applications guidelines.

11. Specifications. The specifications for this standard are International Telegraph and Telephone Consultative Committee (CCITT) Recommendations H.320, H.221, H242, H.261, and H.230. The following sections specify the requirements for video teleconferencing and videotelephony terminals.

11.1 Overall Description. Specific requirements for different types of video terminals are defined in CCITT Recommendation H.320. All terminals that meet this standard shall follow the specifications of H.320. Two classes of terminals are defined for Federal use. The specifications defined below are a minimum for each class.

Class 1 terminals are for services that are limited to lower data rates, such as provided by a basic rate ISDN. An example is desk-top video telephone. Terminals acquired for Class 1 applications shall be capable of operation at a minimum of p=1 and 2 using QCIF.

Class 2 terminals are for services requiring higher quality than Class 1 such as needed for full video teleconferencing. Terminals acquired for Class 2 applications shall contain the functionality of Class 1 terminals, plus at a minimum, be capable of operation at p=6. All Class 2 terminals shall be capable of operation at Full CIF at rates equal to and above p=2.

Examples of terminal configurations are given below:

—Class 1 terminal operating over 1 or 2 B channels of an ISDN using QCIF.

—A Class 2 terminal capable of operating using 1–6 B channels of an ISDN using full CIF at rates equal or greater to p=2.

—A Class 2 terminal capable of operating using 1 or 2 B channels and an HO channel. The terminal is capable of operation using full CIP.

—A Class 2 terminal capable of operating using 1 or 2 B channels, an HO channel, and an H11 channel. The terminal is capable of operation using full CIF.

11.2 Frame Structure. All terminals that meet this standard shall use all the specifications defined in CCITT Recommendation H.221. The H.221 framing structure multiplexes subchannels for audio, video, data, and telematic transmission, as well as in-channel terminal-to-terminal signalling information, within an overall transmission channel of 56 to 1,920 kb/s.

This standard addresses data channels at nominal bit rates of px64 kb/s, where p is an integer that can range from 1 to 30. For unrestricted networks, such as provided by ISDN, each increment of data rate may actually be 64 kb/s, but in restricted networks each increment may be only 56 kb/s. Equipment that meets this standard shall be capable of operating with unrestricted or restricted networks. Restricted networks are discussed in Annex 2 of H.221.

The recommendations which this standard references were designed primarily for use with an ISDN. In an ISDN, the overall transmission channel may consist of 1 to 6 B (64 kb/s) channels, 1 to 4 HO (384 kb/s) channels, an H10 (1,472 kb/s) channel, or an H11 (1,536 kb/s) channel. The framed signals can also be carried on other switched or dedicated digital transmission facilities, such as 1 to 6 56 kb/s connections, a DS1 connection, or a fractional DS1 connection.

11.3 System for Establishing Communication Between Audiovisual Terminals. All terminals that meet this standard shall use all specifications of CCITT Recommendation H.242 for establishing communication between two audiovisual terminals. H. 242 describes the in-channel terminal-to-terminal communication control procedures. These procedures allow audiovisual terminals with different capabilities to interwork with each other and with existing telephone equipment. These procedures also allow terminals to switch among compatible modes of operation to support additional applications, for example, sending a facsimile or connecting two personal computers.

11.4 Video Codec. All terminals that meet this standard shall be capable of color and near-full motion operation using, at a minimum, the QCIF format defined in CCITT Recommendation H.261. All terminals shall meet all specifications of H.261. An encoder shall be capable of coding at an

minimum average of 6 frames per second. The decoder shall be capable of decoding at least 7.5 frames per second. This is the minimum picture interval and is discussed in H.261, H.221, and H.242. Higher rates can be negotiated using the procedures in H.242.

A terminal is not precluded from using coding algorithms other then H.261, but for every video coding rate the terminal is capable of, the terminal shall be capable of using the H.261 coding algorithm. The purpose of this requirement is to prevent two terminals which are capable of communicating at a high transmission rate such as p=24 having to communicate at p=6 to be interoperable.

Motion Compensation (MC) is optional in the encoder. Motion compensation is required in the decoder, where the reconstruction of the motion is relatively simple. The decoder shall accept one vector per macroblock.

Note: The video coding algorithm described in this standard is a variable-rate algorithm. Video transmission is not fixed at multiples of 56 or 64 kb/s, but instead occupies all bandwidth available for video within an overall audiovisual communications system. "Px64 kb/s" are the nominal transmission rates of the overall system. CCITT Recommendation H.221 provides for operating at multiples of 56 and 64 kb/s.

11.5 Audio Algorithms. This standard does not mandate any audio algorithm, other than those that are mandated in CCITT Recommendation H.320.

Note: CCITT Recommendations H.320 and H.221 reference AV.254. AV.254 was a temporary designation used to reference speech coding work at 16 kb/s. Since the approval of H.320 and H.221, AV.254 has been given the designation G.728. Users of this document are advised that at the time of the writing of this document, G.728 has not yet been approved. The intended use for G.728 is for video teleconferencing terminals operating at a low transmission rate such as the Class 1 terminals specified in this document.

11.6 Frame-Synchronous Control and Indication Signals for Audiovisual Systems. All terminals that meet this standard shall use CCITT Recommendation H.230. H.230 provides additional frame-synchronous control and indication signals such as freeze picture, video loopback, and simple multipoint controls. These control and indication signals are necessary to provide additional functionality and to provide extensibility to future standards.

12. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding for the acquisition of new equipment and services, effective June 1, 1993, except as noted in Section 10.

13 Conflict with Referenced Documents. Where the requirements stated in this standard conflict with any requirements in the referenced specifications, the requirements of this standard shall apply. The nature of the conflict between this standard and the referenced specifications shall be submitted in duplicate to the Director, Computer Systems Laboratory, Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

14. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such an agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system or related telecommunications system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

15 Where to Obtain Copies. Copies of this publication including CCITT Recommendations H.320, H.221, H.242, H.261, and H.230 are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 178 (FIPSPUB178), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

In addition, CCITT Series H Recommendations are available individually from NTIS. When ordering, specify:

H.221–1990—PB93–979101
H.230–1990—PB93–979102
H.242–1990—PB93–979103
H.261–1990—PB93–979104
H.320–1990—PB93–979105

[FR Doc. 92–30812 Filed 12–18–92; 8:45 am]
BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

December 15, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 16, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the

Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 347/348 is being increased by application of swing, reducing the limit for Categories 342/642 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14389, published on April 20, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on December 16, 1992, you are directed to amend further the directive dated April 14, 1992, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Costa Rica:

Category	Adjusted twelve-month limit [1]
347/348	1,185,232 dozen.
342/642	186,514 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-30853 Filed 12-18-92; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

December 15, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Jamaica have agreed to extend their Bilateral Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, for a one-year period beginning on January 1, 1993 and extending through December 31, 1993.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels (GALs) for the period January 1, 1993 and through December 31, 1993.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6049, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended and extended, between the Governments of the United States and Jamaica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	350,000 dozen pairs.
336/636	118,000 dozen.
338/339/638/639	930,066 dozen.
340/640	434,923 dozen of which not more than 368,012 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340-Y/640-Y [1].
341/641	546,130 dozen.
342/642	175,000 dozen.
345/845	134,759 dozen.
347/348/647/648	1,003,890 dozen.
352/652	600,000 dozen.
445/446	49,891 dozen.
447	10,000 dozen.
632	100,000 dozen pairs.

[1] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Jamaica.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1993 and extends through December 31, 1993.

Category	Guaranteed Access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648	2,000,000 dozen.
352/652	3,250,000 dozen.
447	30,000 dozen.
632	3,300,000 dozen pairs.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate designated consultation levels or specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–30854 Filed 12–18–92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0054]

Clearance Request for U.S.-Flag Air Carriers Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0054).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning U.S.–Flag Air Carriers Certification.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag carrier is available to provide such services. In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a certification on vouchers involving such transportation. The contracting officer uses the information furnished in the certification to determine whether adequate justification exists for the contractor's use of other than a U.S.-flag air carrier.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents, 150; responses per respondent, 2; total annual responses, 300; preparation hours per response, .25; and total response burden hours, 75.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0054, U.S.–Flag Air Certification, in all correspondence.

Dated: December 9, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–30610 Filed 12–18–92; 8:45 am]

BILLING CODE 6820-34-M

Office of the Secretary

DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, 13–14 January 1993.

ADDRESSES: The meeting will be held at Eglin Air Force Base, Ft. Walton Beach, FL.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: December 15, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30895 Filed 12–18–92; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 12 January 1993.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: December 15, 1992.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30896 Filed 12–18–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 11 January 1993.

Time of Meeting: 0830–1630.

Place: Pentagon.

Agenda: The Army Science Board's Ad Hoc Panel on "Technology for The Future Land Warrior" will meet to analyze data provided by the users and developers and to write the final report on advanced technology for the future land warrior. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C. specifically subparagraph (4) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary and nonproprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–30817 Filed 12–18–92; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 27 January 1993.

Time of Meeting: 0830–1630.

Place: Pentagon.

Agenda: The Army Science Board's Issue Group on "Analysis, Test and Evaluation" will meet for discussion focussed on risk management in the test and evaluation process. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–30818 Filed 12–18–92; 8:45 am]

BILLING CODE 3710–08–M

DELAWARE RIVER BASIN COMMISSION

Amendments to Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Part III Water Quality Regulations

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its December 9, 1992 business meeting, the Delaware River Basin Commission amended its Comprehensive Plan, Water Code and Water Quality Regulations relating to water quality standards and policies to protect existing water quality in certain waters of the Basin. The amendments set forth an overall framework for providing special water quality protection measures in waters deemed by the Commission to have exceptionally high scenic, recreational, ecological and/or water supply values. The amendments also classify specific stream reaches as Special Protection Waters, thus activating the provisions of the Special Protection Waters policies in these reaches. In addition, the amendments define the institutional structure within which the Commission, that state environmental agencies and others will share overall water quality management responsibilities. The amendments also include numerical definitions of Existing Water Quality and the locations of monitoring points which will be used to manage water quality.

By the same action, the Commission amended its Administrative Manual—Rules of Practice and Procedure, revising certain point source pollution control policies and requirements to protect existing water quality in certain Basin waters. Those amendments are published elsewhere in the Rules and Regulations section of this issue of the **Federal Register**. In sum, the amendments reduce the threshold for point source discharges deemed not to have a substantial effect on the water resources of the Basin and not required to be submitted to the Commission under section 3.8 of the Compact from a daily average rate of 50,000 gallons to 10,000 gallons in the drainage area to Special Protection Waters.

EFFECTIVE DATE: December 9, 1992.

ADDRESSES: Copies of the Commission's Water Code of the Delaware River Basin, Administrative Manual—Part III Water Quality Regulations, and the full text of the amendments are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500 X203.

SUPPLEMENTARY INFORMATION: The Commission held public hearings on the proposed amendments on May 5, 1992; May 6, 1992 and May 15, 1992 as noticed in the March 18, 1922 and April 15, 1992 issues of the **Federal Register** (Vol. 57, No. 53 and Vol. 57, No. 73). Based upon testimony received and considerable deliberation, the Commission has amended its Comprehensive Plan, Water Code of the Delaware River Basin and

Administrative Manual—Part III Water Quality Regulations.

Delaware River Basin Compact, 75 Stat. 688.

Dated: December 14, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92–30856 Filed 12–18–92; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER90–283–006, et al.]

Cambridge Electric Light Co. et al.; Electric rate, Small Power Production, and Interlocking Directorate Filings

December 14, 1992.

Take notice that the following filings have been made with the Commission:

1. Cambridge Electric Light Co.

[Docket No. ER90–283–006]

Take notice that on November 25, 1992, Cambridge Electric Light Company (Cambridge) tendered for filing a fully executed copy of the Service Agreement between Cambridge and the Town of Belmont, Massachusetts.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Cambridge Electric Light Co.

[Docket No. ER93–246–000]

Take notice that on November 25, 1992, Cambridge Electric Light Company tendered for filing its compliance refund report pursuant to the Commission's order issued on December 6, 1990.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Washington Water Power Co.

[Docket No. ER93–15–000]

Take notice that on December 4, 1992, Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Amendment to its filing of the Capacity and Energy Sales Agreement between The Washington Water Power Company (WWP) and Northern California Power Agency (NCPA). WWP states that the purposes of the amendment is to make changes requested by Commission staff.

A copy of the filing was made to Northern California Power Agency.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Co.

[Docket No. ER93–269–000]

Take notice that on December 9, 1992, Southern California Edison Company (Edison) tendered for filing the Letter Agreement for Expansion Services rendered by Edison for the City of Pasadena's T.M. Goodrich Receiving Station (Letter Agreement).

On July 24, 1992 Pasadena and Edison executed an amendment which provides for certain new 230–kV facilities added to the T.M. Goodrich Receiving Station by Pasadena to be subject to Edison's written approval and Edison will operate and maintain those new facilities. In conjunction with that amendment, Pasadena has requested Edison to perform certain engineering services for the expansion of Goodrich.

The Letter Agreement contains the services that were performed by Edison and the costs associated with the services.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Co. of New Hampshire

[Docket No. ER93–230–000]

Take notice that on November 23, 1992, Public Service Company of New Hampshire (PSNH) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 140 between Connecticut Light and Power Company, Western Massachusetts Electric Company and PSNH.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Co.

[Docket No. ER92–725–000]

Take notice that on December 9, 1992, Maine Public Service Company (Maine Public) tendered an amended filing of a proposed initial rate schedule, originally filed July 14, 1992, pertaining to the short term, non-firm sale of capacity and energy. The rate will be negotiated between Maine Public and the purchaser at the time of the transaction, but not to exceed Maine Public's cost of service for the units available for sale. A Service Agreement will be executed prior to the time of a purchase by a particular utility and submitted to the Commission. An amended filing is being made to include modifications suggested by the Commission Staff.

Additionally, Maine Public has included with the amended filing an executed Service Agreement with Bangor-Hydro-Electric Company.

Maine Public has requested that the rate schedule become effective no later than November 18, 1992, corresponding with the commencement of the initial transaction under said rate schedule, and requests waiver of the Commission's regulations regarding filing.

Comment date: December 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30821 Filed 12–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–102–000, et al.]

Sea Robin Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Sea Robin Pipeline Co.

[Docket No. CP93–102–000]

December 11, 1992.

Take notice that on December 8, 1992, Sea Robin Pipeline Company (Sea Robin), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP93–102–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service under its Rate Schedule X–23 which was authorized in Docket No. CP78–7–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Sea Robin proposes to abandon a transportation service performed for Natural Gas Pipeline Company of

America (NGPL) pursuant to an agreement dated August 16, 1977, as amended. Sea Robin states that the service currently involves the transportation of up to 3,799 Mcf of gas per day from Block 127, South Marsh Island Area, to a point onshore near Erath, Vermilion Parish, Louisiana. Sea Robin explains that NGPL has notified it that NGPL desires to terminate the agreement effective as of the expiration of the primary term of the agreement, April 22, 1993, and has requested that Sea Robin seek appropriate abandonment authorization. Sea Robin advises that the abandonment would relieve NGPL of demand charges resulting from reserved firm capacity no longer needed. Further, Sea Robin advises that no facilities are to be abandoned.

Comment date: January 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP93–99–000]

December 11, 1992.

Take notice that on December 8, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–99–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon storage and transportation services performed under Panhandle's Rate Schedule E–9 in conjunction with Michigan Consolidated Gas Company (MichCon) and ANR Pipe Line Company (ANR), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon the services which were carried out under an agreement between Panhandle, MichCon and ANR.[1] It is stated that Panhandle was authorized in Docket No. CP77–253, *et al.*, to provide storage services for its customers utilizing storage contracts with MichCon and transportation contracts with ANR. These services are no longer needed, because they have been replaced by storage and transportation services authorized by the Commission in Docket No. CP77–253–026. Panhandle asserts that it will cancel Rate Schedule E–9 on receipt of the requested abandonment authorization. It is stated that no customers would lose service as a result of the proposed abandonment. No facilities are proposed to be abandoned.

Comment date: January 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Co.

[Docket No. CP93–90–000]

December 11, 1992.

Take notice that on December 4, 1992, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP93–90–000 an application pursuant to sections 7(b) and 157.5 of the Natural Gas Act for permission and approval to abandon certain certificated transportation, exchange and sales services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that the specific services to be abandoned and the rate schedules under which the service was performed are: special Rate Schedule Z–6 sales to the City of Rankin, Texas; exchange with Northern Natural Gas Company (Northern) under Rate Schedule X–10; transportation service for Northern, under Rate Schedule X–11; and an exchange with Northern under Rate Schedule Z–1. El Paso further states that all such rate schedules are contained in its FERC Gas Tariff, Third Revised Volume No. 2. El Paso indicates that El Paso and the parties referenced above have entered into specific letter agreements which terminate the subject gas transportation, gas exchange or gas sales agreements.

El Paso reports that no facilities would be abandoned as a result of the instant proposal to abandon services. El Paso further states that it will continue to operate all of the related facilities to the extent necessary to provide part 284 transportation service.

Comment date: January 4, 1993, in accordance with Standard Paragraph F at the end of the notice.

4. ANR Pipeline Co.

[Docket No. CP93–87–000]

December 11, 1992.

Take notice that on December 2, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP 93–87–000 a prior notice request with the Commission pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate under section 7 of the NGA the Stag Lake facilities [which ANR constructed under section 311 of the Natural Gas Policy Act of 1978 (NGPA) in Stag Lake, St. Joseph County, Michigan, under the blanket certificate issued in Docket No. CP82–480–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

ANR states that the Stag Lake facilities consist of 3.5 miles of 24-inch pipe metering and appurtenant facilities, which ANR built in 1990 and placed in service on February 2, 1990, under section 311 of the NGPA. ANR spent a total of $4,338,000 to construct these facilities for delivering gas to the Consumers Power Company at Stag Lake. ANR now proposes to operate the Stag Lake facilities under authority of section 7 of the NGA. ANR states that it currently delivers approximately 253,500 dekatherms per day of natural gas via the Stag Lake facilities. ANR also states that it does not request sales authority in this proceeding. ANR further states that certification of the Stag Lake facilities would have no impact on ANR's gas supply situation and that deliveries via these facilities would not result in any detriment or disadvantage to ANR's other customers.

Comment date: January 25, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. Sea Robin Pipeline Co.

[Docket No. CP93–103–000]

December 11, 1992.

Take notice that on December 8, 1992, Sea Robin Pipeline Company (Sea Robin), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP93–103–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service under its Rate Schedule X–22 which was authorized in Docket No. CP77–618–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Sea Robin proposes to abandon a transportation service performed for Natural Gas Pipeline Company of America (NGPL) pursuant to an agreement dated August 16, 1977, as amended. Sea Robin states that it is currently authorized to transport up to 44,271 Mcf of gas per day from the Eugene Island Block 305 Area, to a point onshore near Erath, Vermilion Parish, Louisiana. Sea Robin explains that NGPL has notified it that NGPL desires to terminate the agreement effective as of the expiration of the primary term of the agreement, April 8, 1993, and has requested that Sea Robin seek appropriate abandonment authorization. Sea Robin advises that the abandonment would relieve NGPL of demand charges resulting from reserved firm capacity no

[1] The original agreement was with Michigan Wisconsin Pipe Line Company, predecessor of ANR.

longer needed. Further, Sea Robin advises that no facilities are to be abandoned.

Comment date: January 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

6. ANR Storage Co.

[Docket No. CP93–97–000]

December 14, 1992.

Take notice that on December 7, 1992, ANR Storage Company (ANR Storage), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–97–000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the storage of natural gas, as permitted by subpart A of part 284 of the Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR Storage requests the issuance of the blanket certificate in order to provide storage service on behalf of interstate pipelines and other customers. It is stated that on receipt of the requested part 284 blanket certificate, ANR Storage would terminate its existing part 157 blanket certificate. It is asserted that ANR Storage will comply with the requirements of § 284.221(c) of the Regulations. It is further asserted that no customers of ANR Storage would be affected by the proposed replacement of the part 157 blanket certificate with the part 284 blanket certificate.

Comment date: January 4, 1993, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30820 Filed 12–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–01654T; Louisiana–16]

State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 15, 1992.

Take notice that on December 11, 1992, the Office of Conservation of the Department of Natural Resources for the State of Louisiana (Louisiana) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Lower Haynesville Formation, Reservoir A, underlying parts of the Arkana and North Carterville Fields in Bossier Parish, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers all of sections 1–5 and the north half of sections 9–11 of Township 23 North, Range 12 West.

The notice of determination also contains Louisiana's findings that the referenced part of the Lower Haynesville Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30917 Filed 12–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–106–000]

Arkla Energy Resources; Notice of Request Under Blanket Authorization

December 15, 1992.

Take notice that on December 10, 1992, Arkla Energy Resources, a division of Arkla, Inc., (Arkla), P.O. Box 21734, Shreveport, LA 71151, filed in Docket No. CP93–106–000, a request pursuant to §§ 157.205 and 157.211, 212, and 216 of the Commission's Regulations under the Natural Gas Act, for authority to construct and operate certain facilities and to abandon certain facilities in Louisiana, all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla specifically proposes to (1) abandon in place its FM–28 Line serving Arkansas Louisiana Gas Company's (ALG's) Gulftown border because the line is corroded and it leaks around the clamps and collars and (2) relocate the meter station from its FM–28 Line to an existing inactive tap on its F–2 Line to continue to delivery to ALG.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30918 Filed 12–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES93–16–000]

Century Power Corp.; Notice of Application

December 11, 1992

Take notice that on December 11, 1992, Century Power Corporation ("Century") filed an application under section 204 of the Federal Power Act seeking authorization to modify the terms of its existing debt obligations with CITIBANK, N.A. ("CITIBANK") which were initially undertaken in connection with Century's guarantee in 1987 of an issue of Variable Rate Demand Pollution Control Bonds in the principal amount of $86,500,000. Century requests authority to revise its payment obligations to CITIBANK, to issue a substitute promissory note evidencing its indebtedness to CITIBANK and to secure its obligations through applicable mortgage amendments.

Century requests expedited action on its application so that an order can be issued as soon as possible but, in no event, later than December 28, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1992. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30822 Filed 12–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–101–000]

United Gas Pipe Line Co.; Notice of Request Under Blanket Authorization

December 11, 1992

Take notice that on December 8, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–101–000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to install a 2-inch sales tap and meter station at the existing Baxterville 4-inch line to provide a delivery point to serve Oryx Energy Company (Ornx) in Lamar County, Mississippi under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with Commission and open to public inspection.

United states that upon execution of an open-access transportation agreement it will be authorized te provide natural gas transportation service to Oryx. United further states that the service provided to Oryx will be interruptible and will therefore have no impact on United's curtailment plan.

United further states that the proposed activities will not affect United's ability to serve its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–30823 Filed 12–18–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–152–NG]

TexPar Energy, Inc., Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting TexPar Energy, Inc., blanket authorization to import and/or export up to an aggregate of 200 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., December 15, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–30912 Filed 12–18–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of November 20 Through November 27, 1992

During the Week of November 20 through November 27, 1992, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 14, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals

List of Cases Received by the Office of Hearings and Appeals

[Week of November 20 through November 27, 1992]

Date	Name and location of applicant	Case No.	Type of submission
11/20/92	Gulf/Grand Prix Oil Corporation Atlantic Beach, FL	RR300–212	Request for Modification/Rescission in the Gulf Refund Proceeding.
If Granted: The March 17, 1992 Dismissal Letter (Case No. RF300–11882) issued to Grand Prix Oil Corporation would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.			
11/23/92	Arco/Dan Bavuso's Arco Atlantic Beach, FL	RR304–53	Request for Modification/Rescission in the Arco Refund Proceeding.
If Granted: The October 28, 1992 Dismissal Letter (Case No. RF304–13314) issued to Dan Bavuso's Arco would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.			
11/25/92	Texaco/Bay Service Station Washington, DC	RR321–122	Request for Modification/Rescission in the Texaco Refund Proceeding.
If Granted: The July 22, 1992 Decision and Order (Case No. RF21–11430) issued to Bay Service Station regarding the firm's application for refund submitted in the Texaco refund proceeding would be modified.			

Refund Applications Received

Date received	Name of refund proceeding/name of refund application	Case no.
11/20/92 Thru 11/27/92	Texaco Oil Refund Applications Received	RF321–19454 Thru RF321–19477
11/20/92 Thru 11/27/92	Gulf Oil Refund Applications Received	RF300–20714 Thru RF300–20733
11/20/92 Thru 11/27/92	Atlantic Richfield Applications Received	RF304–13400 Thru RF304–13414
11/20/92 Thru 11/27/92	Crude Oil Refund Applications Received	RF272–83964 Thru RF272–83977
11/20/92	Benson County Highway Dept.	RC272–165
11/23/92	Jeanerette Canal	RF346–8
11/23/92	Charles Canal	RF346–9
11/23/92	Broadmoor Canal Center	RF346–10
11/23/92	Samuel Tab Higginbotham	RF346–11
11/23/92	Dallas Distributors, Inc.	RF343–11
11/25/92	Cajun Energy, Inc.	RF346–12
11/27/92	John's Clark Super 100	RF342–312

[FR Doc. 92–30911 Filed 12–18–92; 8:45 am]
BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of November 9 Through November 13, 1992

During the week of November 9 through November 13, 1992 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Barton J. Bernstein, 11/13/92, *LFA–0013*

Barton J. Bernstein filed an Appeal from a denial by the Director of the Office of Executive Secretariat, of a request for information that he filed under the Freedom of Information Act (FOIA). In his Appeal, Professor Bernstein challenged the Director's withholding of portions of two letters written in 1950 and 1952 in the possession of the DOE. As the result of an appellate review of the documents, the DOE determined that some of the deleted information could now be declassified and released, while other withheld portions must continue to be withheld as Restricted Data under the Atomic Energy Act of 1954 concerning nuclear weapons design, which are exempt from mandatory disclosure under Exemption 3 of the FOIA. Accordingly, the Appeal was granted in part and denied in part.

James L. Schwab, 11/12/92, *LFA–0245*

James L. Schwab filed an Appeal from a partial denial by the Office of the Inspector General (IG) of a Request for Information submitted pursuant to the Freedom of Information Act. In considering the Appeal, the DOE found that the absence of a descriptive index rendered the requester unable to formulate a meaningful appeal. As a result, the determination was remanded to the IG for preparation of a descriptive index of the withheld documents.

WPC Companies, 11/09/92, *LFA–0241*

The WPC Companies filed an Appeal from a determination issued by the Acting Director of the Information and Administrative Services Division of the Strategic Petroleum Reserve Project Management Office (SPRMO) of the Department of Energy (DOE) in response to its Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE determined that SPRMO permissibly invoked the deliberative process privilege of Exemption 5 to withhold an audit report on an SPRMO contractor which was prepared by the management and operations contractor at SPRMO pursuant to its DOE contract. The audit report was prepared to assist in ongoing negotiations over a disputed contract amount. Thus, the DOE determined that the contractor was operating on behalf and at the behest of the Agency and that the audit report was part of the deliberative process. The DOE also determined, however, that SPRMO had not determined whether any non-exempt material could be reasonably segregated and released as required by the FOIA. Accordingly, the Appeal was denied in part, granted in part, and remanded with instruction to either release non-exempt material or issue a new determination in accordance with the guidance in the Decision and Order.

Requests for Exception

Gallup-Silkworth Petroleum Products, 11/09/92, *LEE–0044*

Gallup-Silkworth Petroleum Products filed an Application for Exception from the requirement that it file Form EIA–782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering Gallup-Silkworth's request,

the DOE found that the firm was not adversely affected by the reporting requirements in a way that was significantly different from the burden borne by similar reporting firms. Therefore, the DOE denied Gallup-Silkworth's Application for Exception.

Smith Wholesalers, Inc., 11/10/92, *LEE-0040*

Smith Wholesalers, Inc. filed an Application for Exception from the requirement that it file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied.

Implementation of Special Refund Procedures

Crescent Refining & Oil Company, Petroleum Fuel Company, 11/12/92 *LEF-0044*

The DOE issued a Decision and Order implementing procedures for the distribution of $288,327, plus accrued interest, obtained from Crescent Refining and Oil Company and Petroleum Fuel Company (Crescent). These funds were remitted by Crescent to the DOE to settle possible pricing violations with respect to specific sales of No. 2-D diesel fuel, fuel oil, and bunker fuel during the period September 1, 1973 through October 31, 1975 to customers listed in a Remedial Order (R.O.) issued to Crescent. The DOE determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V. Applications for Refund will be accepted from the customers named in the R.O. and for the specific transactions covered by the R.O. The specific information to be included in the Applications for Refunds, which must be submitted by June 30, 1993, is included in the Decision.

Refund Applications

Atlantic Richfield Company/Westfield ARCO, 11/13/92 *RF304-3953, RF304-13252*

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Atlantic Richfield Company Subpart V special refund proceeding on behalf of Westfield ARCO and its owner, Mr. Steven P. Stawinski, Jr. Noting that the firm had filed a previous refund claim which was granted and then rescinded, the DOE found that the firm falsely stated that it had filed no other ARCO refund claims. Because of this misrepresentation, the DOE denied the two Applications, with prejudice to a refiling.

Shell Oil Company/The Tennessean Truckstop et al., 11/13/92 *RF315-10214 et al.*

The DOE issued a Decision and Order concerning 5 Applications for Refund in the Shell Oil Company special refund proceeding. Since all were filed after the April 1, 1992 deadline, the claims were denied.

Texaco Inc./Trotti Thompson, Inc., 11/12/92 *RF321-16151*

The DOE issued a Decision and Order denying the Application for Refund filed on behalf of Trotti Thompson, Inc. in the Texaco Inc. special refund processing. Ashland Oil, Inc., the parent company of Trotti Thompson, Inc., had already received the $50,000 maximum refund under the medium-range presumption of injury at the time Trotti Thompson, Inc. application was filed. Consequently, the DOE determined that Trotti Thompson, Inc. is ineligible to receive any refund based on its purchases of Texaco products during the consent order period.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Gulf Oil Corporation/Basil Oil Field Service, Inc.	RF300-20673	11/09/92
Gulf Oil Corporation/Lake's Gulf.	RF300-17060	11/10/92
Gulf Oil Corporation/Strickland Transportation Co.	RF300-12909	11/09/92
Wilson Freight Co ...	RF300-12910	
Parkersburg Community School.	RF272-81325	11/13/92
School Administrative District #20 Oil Corporation.	RF272-81327	11/13/92
Shell Oil Corporation/Crawford Petroleum, Inc.	RF315-8388	11/13/92
Stanley J. Clark, Inc.	RF315-10274	
St. Francis Hospital	RF272-83508	11/10/92
Texaco Inc./Jordan's Texaco et at.	RF321-15258	11/12/92
Texaco Inc./Stokes' Texaco et al.	RF321-1404	11/12/92
Texaco Inc./Victory Drive Texaco et al.	RF321-1454	11/10/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Boston Edison Company	RR307-14
Combe Oil Company	RF304-3445
James Petroleum Corp	RF304-3455
Leroy's Texaco	RF321-19349
Lincoln County, Wisconsin	RF272-85948
Northwest Oil Company, Inc	RF321-15807
Stauffer Chemical Company	RF304-7686
The Jackson Oil Company	RF304-3454

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 14, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-30910 Filed 12-18-92; 8:45 am]

BILLING CODE 6450-01-m

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $1,786,696.83 in principal, plus accrued interests, in alleged crude oil violation amounts obtained by the DOE under the terms of a consent order entered into with Texas International Company and Texas International Petroleum Corporation (Case No. LEF-0045). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for Refund must be filed by June 30, 1994, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c),

notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Texas International Company and Texas International Petroleum Corporation. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by June 30, 1994, and should be sent to the address set forth in the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows: Any claimant that has already filed a crude oil refund application need not file again.

Dated: December 14, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 14, 1992.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Texas International Co.; Texas International Petroleum Corp.
Date of Filing: May 5, 1992
Case Number: LEF–0045

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.81. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

I. Background

On September 14, 1984 the DOE entered into a consent order with Texas International Co. (TIC) and its wholly owned subsidiary, Texas International Petroleum Corp. (TIPCO) (hereinafter referred to collectively as the consent order firms). During the period September 1, 1973 through December 31, 1975, TIPCO was engaged in the production and sale of crude oil. The DOE audited the companies' compliance during the period with the Mandatory Petroleum Pricing and Allocation Regulations (the regulations) and issued a Proposed Remedial order (PRO) to the consent order firms requiring refunds for alleged crude oil overcharges. Thereafter, the firms entered into a consent order which resolved the issues raised by the PRO.

On May 5, 1992, the ERA filed a Petition for the Implementation of Special Refund Procedures for alleged crude oil overcharges obtained from the consent order firms. In the present case, the consent order firms have remitted a total of $1,786,696.83 to the DOE in accordance with Consent Order 640C00181. An additional $845,791.35 in interest has accrued on that amount as of October 31, 1992. This Decision and Order sets forth the OHA's plan to distribute these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situation where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, See Office of Enforcement, 9 DOE ¶ 82,508 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received from TIPCO and TIC, and have determined that such procedures are appropriate in the present case.

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement In re: The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of all crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 19871 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See City of Columbus, Georgia, 16 DOE ¶ 85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See, e.g., Shell Oil Co., 17 DOE ¶ 85,204 (1988) (Shell); Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel).

II. The Proposed Decision and Order

On July 8, 1992, OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from TIPCO. OHA tentatively concluded that the funds in that case should be distributed in accordance with the MSRP and the April 10, 1987 Notice. Pursuant to the MSRP, OHA proposed to initially reserve twenty percent of the alleged crude oil violation amounts for direct restitution to qualified applicants who are able to establish that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, OHA proposed to require applicants for refunds to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PD&O stated that end users of petroleum products whose businesses were unrelated to the petroleum industry could rely upon the end user presumption to establish that they absorbed the alleged crude oil overcharges, and therefore need not submit any further proof of injury to receive a refund. OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 10, 1987 Notice. Comments were solicited regarding the tentative distribution process set forth in the PD&O. No comments were received.

III. Refund Claims

We have concluded that the alleged crude oil violation amount of $1,786.696.83 in

principal, plus accrued interest, covered by this Decision shall be distributed in accordance with the procedures described in the PD&O. Accordingly, we will adopt the DOE's standard procedures to distribute the consent order funds. We have chosen to initially reserve twenty percent of these funds, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner to that used in subpart V proceedings to evaluate claims based on alleged refined product overcharges. See Mountain Fuel, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h (1982) In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See Shell 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. Id. These applicants may, however, use econometric evidence of the type found in the OHA Report on Stripper Well Overcharges, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also Petroleum Overcharge Distribution and Restitution Act § 3003(b)(2), 15 U.S.C. 4502(b)(2).

If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for subpart V crude oil refund monies. See Mid-America Dairymen v. Herrington, 878 F.2d 1448 (Temp. Emer. Ct. App. 1989), 3 Fed. Energy Guidelines ¶ 26,617 (1989); In re: Department of Energy Stripper Well Exemption Litigation, 707 F. Supp. 1267 (D. Kan. 1983), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($2,632,488.18) by the total consumption of petroleum products in the United States during the period of price controls. (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868, n.4. This yields a volumetric refund amount of $0.000001302568852719 per gallon.

As has been stated in prior decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, e.g., A. Tarricone, Inc., 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The deadline for filing an Application for Refund from the TIPCO funds is June 30, 1994. It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of $.0008 per gallon. While we anticipate that applicants which filed their claims by June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds.

IV. Crude Oil Application Requirements

To apply for a crude oil refund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, the name and address of the person who should receive any refund check.[1] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm;

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, an annual schedule displaying the number of gallons of each petroleum product purchased during this refund period, and the total number of gallons of all petroleum products claimed on the refund application;

(5) An explanation as to how the applicant obtained the above mentioned purchase volumes, and, if estimates were used, a description of its method of estimation;

(6) A statement that neither the claimant, its parent firm, affiliates, subsidiaries, successors, nor assigns has waived any right it may have to receive a crude oil refund (e.g., by having executed and submitted a valid waiver accompanying a claim to any of the escrow accounts established pursuant to the Stripper Well Settlement Agreement);

(7) A statement that the applicant has not filed any other refund application in the Subpart V crude oil refund proceeding;

(8) If the applicant is not an end-user, was covered by the DOE price regulations, or is related to the petroleum industry, a showing that the applicant was injured by the alleged crude oil overcharges;

(9) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(10) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

The filing deadline is June 30, 1994. Even though an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

D. Payments to the Federal Government and the States

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil overcharge amounts subject to this Decision, plus accrued interest, will be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H

[1] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditingor archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That: (1) Applications for Refund from the crude oil monies, remitted to the Department of Energy by Texas International Co. and Texas International Petroleum Corporation pursuant to the Consent Order dated September 14, 1984, may now be filed.

(2) All crude oil refund applications submitted pursuant to Paragraph (1) above must be postmarked no later than June 30, 1994.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Controller's Office, Department of Energy, shall transfer 40% of the funds in the subaccount denominated "Texas International Petroleum Corporation" (Consent Order No. 640C00181Z) into the subaccount denominated "Crude Tracking-States," Account No. 999DOE003W.

(4) The Director of Special Accounts and Payroll shall transfer 40% of the funds in the subaccount denominated "Texas International Petroleum Corporation" into the subaccount denominated "Crude Tracking-Federal," Account No. 999DOE002W.

(5) The Director of Special Accounts and Payroll shall transfer 20% of the funds in the subaccount denominated "Texas International Petroleum Corporation" into the subaccount denominated "Crude Tracking-Claimants 4," Account No. 999DOE010Z.

Dated: December 14, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–30909 Filed 12–18–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4545–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Pre-Certification and Testing Exemption–Recordkeeping and Reporting Requirements (EPA ICR No. 0095.04; OMB No. 2060–0007). This ICR requests renewal of the existing clearance.

Abstract: To apply for pre-certification or testing exemptions, vehicle, engine and parts manufacturers must provide EPA with information demonstrating that the exempted items will be used primarily in product development, method assessment, market promotion or research. EPA uses the information to guarantee that uncertified or untested vehicles, engines or parts are not used commercially.

Burden Statement: The public reporting burden for this collection of information is estimated to average 4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle, engine and parts manufacturers.

Estimated Number of Respondents: 155.

Estimated Total Annual Burden on Respondents: 725 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC, 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20503.

Dated: December 11, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–30903 Filed 12–18–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 15, 1992

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0289.

Title: Section 76.601, Performance tests.

Action: Revision of a currently approved collection.

Respondents: State or local governments and businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 10,704 recordkeepers; 26.36 hours average burden per recordkeeper; 285,047 hours total annual burden.

Needs and Uses: Section 76.601 requires every cable system operator to maintain a current listing of the cable television channels which that system delivers to its subscribers. Section 76.601(c) and (d) requires cable systems with over 1,000 subscribers to conduct semi-annual proof of performance tests and triennial proof of performance tests for color testing. On 2/13/92, the Commission adopted a Report and Order, MM Docket No. 91–169, Cable Television Technical and Operational Requirements. On 6/15/92, OMB approved new testing requirements adopted in this proceeding for this rule section. Eight Petitions for Reconsideration/Clarification were filed in this proceeding. On 11/10/92, the Commission adopted a Memorandum of Opinion and Order, MM Docket No. 19–169. On reconsideration, the Commission revised Section 76.601 to reduce the number of test points from six to one for each portion of a system served by a technically integrated microwave hub. This test point can be

counted against the total number of test points required as well. Additionally, the Commission reduced the number of channels required (a minimum of four) for hum testing in 76.601(a) to one and allowed for the use of a single unmodulated carrier for testing which would allow the use of existing testing equipment on the system. The above relaxations would result in an average annual burden reduction of three hours (from 73 to 70 hours) for cable system with over 1,000 subscribers. The data is used by FCC staff in field inspections and franchise authorities to ensure that an acceptable quality signal is being provided to cable subscribers, and to ensure that there are no single leakage problems which could cause interference with over-the-air radio frequencies involving safety-of-life functions (i.e., police, fire, forestry, aeronautical, amateur radio). The list of channels would be used to determine what program services are carried on which class of cable channel.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-30873 Filed 12-18-92; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 14, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0436

Title: Sections 15.214(d)(3) and 68.200(k), Cordless telephone security coding.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 200 responses; 1 hour average burden per response; 200 hours total annual burden.

Needs and Uses: Cordless telephone security features protect the public switched telephone network from unintentional line seizure and telephone dialing. These features prevent unauthorized access to the telephone line, the dialing of calls in response to signals other than those from the owner's handset and the unintentional ringing of a cordless telephone's handset. Use for the cordless telephone security features reduces the harm cause by some cordless telephones to the "911" Emergency Services Telephone System and to the telephone network in general. The rules require that a statement of the means and procedures used to achieve the protection set forth in the technical regulations for security coding of cordless telephones accompany a FCC Form 731, Application for Equipment Authorization. In addition, any FCC Form 730, Registration of Telephone and Data Terminal Equipment, must be accompanied by a statement indicating that the proposed device contains appropriate provision for protection of the public switched network, pursuant to the requirements of § 15.214. The information will be used to determine compliance of the proposed equipment with the Commission's Rules. Following authorization of the equipment for marketing, the information may be used to determine that the operation of the equipment is consistent with the information supplied at the time of grant, and the equipment marketed complies with the terms of the equipment authorization. The information collected is essential to controlling potential interference to the public switched telephone network, and to establishing compliance of an applicant for equipment authorization with the Commission's technical regulations for the subject devices.

OMB Number: 3060-0402.

Title: Application for a New or Modified Microwave Radio Station License Under Part 21.

Form Number: FCC Form 494.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 10,000 responses; 2 hours average burden per response; 20,000 hours total annual burden.

Needs and Uses: FCC Form 494 is used by telecommunication entities to request authorization to construct and operate a microwave facility. The form is a multipurpose application form used to request Commission authorization for new or modified radio station facilities in the following part 21 services: Point-to-Point Microwave; Local Television Transmission Service; Multipoint Distribution Service; Digital Electronic Message Service; and Fixed Subsidiary Communications Authorization. The form is used to apply for a license for a new radio station; to amend a pending license application; to modify a granted license; and to notify the Commission of certain changes. Several questions on the form require applicants to submit further information in the form of exhibits. Applicants are advised to refer to part 21 of the Commission's Rules before completing the form to determine whether other showings are necessary in addition to those specified in the form. The information collected in the application is used by FCC staff to determine whether the applicant is qualified legally, technically and financially to be licensed to use microwave radio frequencies.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 92-30874 Filed 12-18-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before February 19, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections

Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Revision to 3067–0009.

Title: Disaster Assistance Registration.

Abstract: The Disaster Assistance Registration form, FEMA Forms 90–69 (English) and 90–69A (Spanish), is used only in Presidentially declared major disasters or emergencies to register individuals for and refer them to such Federal disaster assistance programs as temporary housing, individual and family grants, and Small Business Administration disaster loans for individuals and businesses. Eligibility for these disaster assistance programs can not be determined without this information collection. The information is collected by FEMA personnel who interview applicants in person or by telephone.

Type of Respondents: Individuals and households, farms, businesses or other for-profit, non-profit institutions, and small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping

Burden: 33,750 hours.

Number of Respondents: 135,000.

Estimated Average Burden Time per Response: 15 minutes.

Frequency of Response: Other. Only in Presidentially declared major disasters or emergencies.

Dated: December 7, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92–30865 Filed 12–18–92; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200165–010.

Title: Maryland Port Administration/ Ceres Corporation, Marine Terminal Leasing Agreement.

Parties: The Maryland Port Administration, Ceres Corporation.

Synopsis: The modification extends the terms of the Agreement for an additional thirty days beginning December 8, 1992.

By Order of the Federal Maritime Commission.

Dated: December 15, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–30838 Filed 12–18–92; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this noticed appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement Nos.: 224–003800–010, 224–003800–011, 224–003800–12.

Title: Long Beach/California United Terminals, Terminal Agreement.

Parties: City of Long Beach ("City"), California United Terminals.

Synopsis: The amendments correct mistakes in previous amendment filings regarding the purchase price of two cranes and clarify the City's rights concerning usage of the cranes.

By Order of the Federal Maritime Commission.

Dated: December 16, 1992

Joseph C. Polking,

Secretary.

[FR Doc. 92–30866 Filed 12–18–92; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Backup Contracting

AGENCY: Federal Supply Service, GSA.

ACTION: Notice.

SUMMARY: This notice invites comments on proposed clauses that will implement a contracting method known as backup contracting. FSS is dedicated to satisfying the needs of its customer agencies in an efficient and economical manner. To do this, FSS is continuously identifying and eliminating internal and external barriers to the delivering of services. Awarding a backup contract in the event the primary contractor fails to perform has been identified as one contracting method that ensures continued supply support for critical items.

DATES: Comments are due in writing on January 21, 1993.

ADDRESSES: Comments should be addressed to Nicholas Economou, FSS Acquisition Management Center (FCO), Crystal Mall Building #4, room 716, Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Gail Klopfer, Acquisition Policy and Regulations Division (703–305–6413).

SUPPLEMENTARY INFORMATION:

Background

Under a requirements type contract, it a contractor experiences performance problems, the contracting officer may either extend the delivery schedule, terminate individual orders, or terminate the contract and reprocure. These options often result in lapses of contract coverage. Lack of contract coverage often adversely impacts the safety and security aspects of various Federal programs. When a primary contractor is unable to perform, backup contracts can ensure continued supply support.

Backup contracting may be used in the procurement of essential business and weapons critical items. Backup contracting may also be used in procurements for items that have a history of high and unpredictable demand and items that have a history of poor supplier performance.

When this contracting method is used in FSS the following clauses will apply:

Backup Requirements Contract for

FSC Class: *_____*
Commodity: *_____*
Period: *_____* or date contract is activated, whichever is later, through *_____*
(End of Provision)

Provision for Backup Contracts

Items covered by this solicitation may be awarded to more than one contractor under the conditions set forth in the solicitation Award of Backup Contracts provision (M–FSS–XXX). (End of Provision)

Agreement To Be Considered for Award as Backup Contractor

If the offeror agrees to consideration for award of a backup contract at the prices contained in this offer, check "yes" below. If not, check "no".

_____Yes _____No
(End of Provision)

Award of Backup Contracts: (applicable to items _____)

(a) For the items identified above, additional awards (to be referred to as backup contracts) may also be made to the next low responsible and responsive (acceptable) offeror; provided, the price offered is considered to be fair and reasonable the contractor has checked "yes" to clause, H–FSS–XXX, Agreement To Be Considered for Award as Backup Contractor.

(b) In order to qualify for an award as a "backup" contractor, an offeror must have the production capacity to supply the total estimated requirements for each item to be awarded and be capable of complying with all the terms and conditions of this solicitation.

(c) An offeror awarded a backup contract will be identified as the "backup" contractor. When an item(s) is awarded to a "backup" contractor, the offeror who received the basic award for that item(s) shall be identified as the "primary" contractor.
(End of Clause)

Backup Contracts—Additional Terms and Conditions

The following provisions apply to contracts for items for which both a "primary" and "backup" contractor have received an award. Unless otherwise noted, all other clauses contained in this solicitation apply to both the primary and backup contract.

(a) *Placement of orders*—The "primary" contractor is entitled to all requirements required to be purchased by mandatory users under the contract. The "backup" contractor is entitled to receive orders for contract items that either (1) are not placed with the "primary" contractor in accordance with the applicable Monthly Supply Potential (MSP) clause, which the "primary" contractor has refused under that clause; or (2) result from the "primary" contractor's default on individual orders or the entire contract.

(b) *Status Report of Orders and Shipments*—Reports required by the class at 552.242–70, Status Report of Orders and Shipments, are not required from the "backup" contractor until the calendar month in which it receives the first order.

(c) *First article approval*—For any item awarded to the "backup" contractor requiring first article approval, the number of days indicated in paragraph (b) of the First Article Testing clause for submission of the time for testing or the test report is from receipt of written notification from the Contracting Officer that the Government has requirements requiring delivery under the contract.

(d) *Subcontracting plan requirements*—Reports required by the clause at 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, are not required from the "backup" Contractor or its subcontractor until the first period following receipt of the first order.

(e) *Economic Price Adjustment*—If this contract contains an Economic Price Adjustment (EPA) clause, the terms and conditions of the EPA clause apply equally to the "backup" contractor even though the backup contract has not been activated.

(f) *Default*—The following provisions are in addition to standard Default clause of this contract:

(i) In the event of default in performance of the contract either in whole or in part by the "primary" contractor, the "backup" contractor will be used to fulfill the defaulted requirements. The "primary" contractor will be held liable for any resulting excess costs incurred in procuring the defaulted requirements from the "backup" contractor.

(ii) In the event the "backup" contractor defaults, in whole or in part on any requirements that the "primary" contractor was otherwise obligated to deliver but on which he subsequently defaulted, the "backup" contractor will be liable for reprocurement costs which exceed the backup contract price.

(End of Clause)

Dated: December 8, 1992.

Nicholas M. Economou,

CPPO, Director, FSS Acquisition Management Center (FCO).

[FR Doc. 92–30816 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–65]

Quarterly Public Health Assessments Completed and Public Health Assessments To Be Conducted In Response to Requests From the Public

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains the following: 1. A list of sites for which ATSDR has completed a public health assessment, or issued an addendum to a previously completed public health assessment, during the period July-September 1992. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL) and non-NPL sites for which ATSDR has prepared public health assessments in response to requests from the public (petitioned sites). 2. A list of sites for which ATSDR, during the same period, has accepted a request from the public to conduct a public health assessment (petitioned public health assessment). Acceptance for a request for the conduct of a public health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a public health assessment at the site.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments, public health assessments with addenda, and petitioned public health assessments which were accepted by ATSDR during April-June 1992 was published in the **Federal Register** on September 16, 1992, (57 FR 42757). The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). This rule sets forth ATSDR's procedures for the conduct of public health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i)), and appeared in the **Federal Register** on February 13, 1990, [55 FR 5136].

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail

through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. There is a charge determined by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses after the site name.

1. Public Health Assessments or Addenda Completed or Issued

Between July 1, 1992 and September 30, 1992, public health assessments or addenda to public health assessments were issued for the sites listed below:

NPL Sites

California: Advanced Micro Devices #915—Sunnyvale—(PB92–217876), Westinghouse (Sunnyvale Plant)—Sunnyvale—(PB93–112571).
Florida: American Creosote Works, Inc. (Pensacola)—Pensacola—(PB92–217868), Anaconda Aluminum/Milgo Electronics—Miami—(PB92–226380), City Industries—Orlando—(PB92–229137), Florida Steel Corporation—Indiantown—(PB92–239342), Sydney Mine Sludge Pond—Valrico—(PB92–239656), Whitehouse Waste Oil Pits—Whitehouse—(PB92–239623).
Michigan: G & H Landfill—Shelby Township—(PB92–239508).
Nebraska: Cornhusker Army Ammunition Plant—Grand Island—(PB93–113231), 10th Street Site—Columbus—(PB92–224526).
New Hampshire: Mottolo Pig Farm—Raymond—(PB92–214915).
Pennsylvania: Delta Quarries/Stotler Landfill—Antis and Logan Townships—(PB92–209451), Dorney Road Site—Mertztown—(PB92–215011).
Utah: Ogden Defense Depot—Ogden—(PB93–113249).
Wisconsin: Algoma Municipal Landfill—Algoma—(PB92–217850), Wausau Groundwater Contamination—Wausau—(PB92–204031).

Petitioned Sites (Non-NPL Sites)

Connecticut: Air Quality—Wallingford—(PB93–112563), Solvents Recovery Services of New England—Southington—(PB92–214907).
Massachusetts: Groton/Gratuity Road—Groton—(PB93–112555).
Pennsylvania: Lackawanna County—(PB92–209469).

2. Petition for Public Health Assessment Accepted

Between July 1, 1992, and September 30, 1992, ATSDR determined that there was a reasonable basis to conduct a public health assessment for the site listed below in response to requests from the public. As of September 30, 1992, ATSDR initiated a public health assessment at this site.

Tennessee: Chattanooga Creek—Chattanooga.

Dated: December 14, 1992.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92–30850 Filed 12–18–92; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control and Prevention

[Program Announcement Number 310]

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention

Introduction

The Centers for Disease Control and Prevention (CDC), the Nation's prevention agency, announces the availability of funds in fiscal year (FY) 1993 for the Public Health Conference Support Cooperative Agreement Program related to Human Immunodeficiency Virus (HIV) educational and prevention programs. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301 [42 U.S.C. 241] and 317 [42 U.S.C. 247b] of the Public Health Service Act, as amended. Program regulations are set forth in 42 CFR part 52, entitled "Grants for Research Projects," as amended.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, public and private organizations, community-based, national, and regional organizations, state and local governments or their bona fide agents or instrumentalities, federally recognized Indian Tribal governments, Indian tribes or organizations, and small, minority- and/or woman-owned businesses are eligible for these cooperative agreements.

Availability of Funds

Approximately $500,000 will be available in FY 1993 to fund approximately 10 to 15 awards. The awards will average $22,000 and will be funded with a 12-month budget and project period. The funding estimate outlined above may vary and is subject to change, based on the availability of funds. Awards will initially be made on a contingency basis as described below under "Purpose." The following are examples of the most frequently encountered costs that may or may not be charged to the cooperative agreement:

A. As approved, funds may be used for direct cost expenditures: salaries, speaker fees, rental of equipment, registration fees, and transportation cost (not to exceed economy class fares) for non-federal employees.

B. Funds may not be used for the purchase of equipment, payments of honoraria, organizational dues, entertainment/personal expenses, cost of travel and payment of a full-time Federal employee, per diem, or expenses other than local mileage for local participants.

C. Funds may not be used for reimbursement of indirect costs.

D. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds cannot be used for this purpose.

Purpose

The purpose of the HIV-related conference support cooperative agreement is to provide partial support for non-federal conferences in order to stimulate efforts to prevent the transmission of HIV. CDC will collaborate in conferences that specifically focus on preventing HIV transmission. Because conference support by CDC creates the appearance of CDC co-sponsorship, there will be active participation by CDC in the development and approval of those portions of the agenda supported by CDC funds. In addition, the CDC will reserve the right to approve or reject the content of the full agenda, speaker selection, and site selection. The CDC funds will not be expended for non-approved portions of meetings. Contingency awards will be made allowing usage of only 10% of the total amount to be awarded until a final full agenda is approved by CDC. This will provide funds for costs associated with

preparation of the agenda. The remainder of funds will be released only upon approval of the final full agenda. CDC reserves the right to terminate co-sponsorship if it does not concur with the final agenda.

Program Requirements

The CDC will provide support for conferences that are: (1) Directed to local, state, national, or international personnel contributing to HIV prevention efforts; and (2) focused on the application of research/evaluation findings to intervention efforts or the application of these prevention efforts to groups whose behaviors place them at risk for HIV infection. For topics concerned with CDC issues and areas other than HIV prevention, refer to Program Announcement number 313, "Public Health Conference Support Grant Program," published in the **Federal Register** on December 4, 1992, [57 FR 57464].

The activities related to the development of HIV prevention conference require substantial CDC collaboration and involvement. In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities under A., below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Manage all activities related to program content (e.g., objectives, topics, attenders, session design, workshops, special exhibits, speakers, fees, agenda composition and printing). Many of these items may be develop in concert with assigned CDC project personnel.

2. Provide draft copies of the agenda and proposed ancillary activities to CDC for approval. Submit copy of final agenda and proposed ancillary activities to CDC for review and approval.

3. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press). CDC must review and approve of any materials with reference to CDC involvement or support.

4. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and handouts, badges, registration procedures).

5. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

6. Develop and conduct education and training programs on HIV prevention.

7. Participate in the analysis of data from conference activities that pertain to the impact on HIV prevention.

8. Collaborate with CDC staff in reporting and disseminating results and relevant HIV prevention education and training information to appropriate Federal, state, and local agencies, health care providers, HIV/AIDS prevention/service organizations, and the general public.

B. CDC Activities

1. Provide technical assistance through telephone calls, correspondence and site visits in the areas of program agenda development, implementation, and priority setting related to the cooperative agreement.

2. Provide scientific collaboration for appropriate aspects of the program, including selection of speakers, pertinent scientific information on risk factors for HIV infection, preventive measures, and program strategies for the prevention of HIV infection.

3. Approve draft agendas and the final agenda and proposed ancillary activities prior to release to funds.

4. Assist in the reporting and dissemination of research results and relevant HIV prevention education and training information to appropriate Federal, state, and local agencies, health care providers, the scientific community, and HIV/AIDS prevention and service organizations.

Letter of Intent

Potential applicants must submit a letter of intent (not to exceed one typewritten page) that briefly describes the title, location, purpose, and date of the proposed conference and the intended audience (number and profession). This letter should also include the estimated total cost of the conference and the percentage of the total cost being requested from CDC. Letters of intent will be reviewed by program staff for consistency with CDC's health promotion and disease prevention goals and priorities and the purpose of this program. An invitation to submit a final application will be made on the basis of the proposal's relationship to the CDC strategic plan for health promotion and disease prevention and on the availability of funds.

Evaluation Criteria

Letters of intent will be reviewed by program staff for consistency with CDC's HIV prevention goals and priorities and the purpose of this program. An invitation to submit a final application will be made on the basis of the proposal's relationship to the CDC strategic plan for HIV prevention and on the availability of funds. Applications will be reviewed and evaluated according to the following criteria (Total=100 Points):

A. Proposed Program and Technical Approach (50 points)

Evaluation will be based on: 1. The applicant's description of the proposed conference as it relates to HIV prevention and education, including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices. The extent of the applicant's collaboration with other agencies serving the intended audience, including local health and education agencies concerned with HIV prevention.

2. The applicant's description of conference objectives in terms of quality and specificity, feasibility of the conference based on the operational plan, and the extent to which evaluation mechanisms for the conference will be able to adequately assess increased knowledge, attitudes, and behaviors of the target attenders.

3. The quality of the proposed agenda in addressing the chosen HIV prevention/education topic.

4. The degree to which all conference activities stricty adhere to the prevention of HIV transmission.

B. Applicant Capability (40 points)

Evaluation will be based on: 1. The adequacy and commitment of institutional resources to administer the program; and

2. The degree to which the applicant has established and used critical linkages with health and education agencies with the mandate for HIV prevention (letters of support from such agencies should demonstrate linkages specific to the conference).

C. The Qualifications of Program Personnel (10 Points)

Evaluation will be based on: 1. The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership;

2. The competence of associate staff persons, discussion leaders, and speakers to accomplish the proposed conference; and

3. The degree to which the application demonstrates the knowledge of all key personnel about the transmission of HIV, as well as nationwide information and education efforts currently underway that may affect, and be affected by, the proposed conference.

D. Budget Justification and Adequacy of Facilities (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of cooperative agreement funds. The application will also be reviewed as to the adequacy of existing and proposed facilities and resources for conducting conference activities.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance (CFDA) Number

The Catalog of Federal Domestic Assistance Number is 93.118, *Acquired Immunodeficiency Syndrome (AIDS) activities.*

Other Requirements—HIV/AIDS Requirements

Recipients must comply with the document entitled, "Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs" (June 15, 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's AIDS/HIV prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of an government health department consisted with the content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.1113 which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Letter of Intent and Application Submission and Deadline

The original and two copies of the letter of intent must be submitted by close of business on the below listed due dates in order to be considered in the application cycles. Facsimiles are not acceptable.

Letter of intent due date	Application deadline
February 1, 1993	April 1, 1993.
March 15, 1993	May 14, 1993.

Following submission of a letter of intent, successful applicants will receive a written notification to submit an application for funding. Applications may be submitted *only* after the letter of intent has been reviewed and written invitation from the CDC has been received by the prospective applicant. An invitation to submit an application does not constitute a commitment to fund the applicant. The original and two copies of the application must be submitted on PHS Form 5161–1 and in accordance with the schedule below. The schedule also sets forth the earliest possible award date.

Application deadline	Earliest possible award date	Earliest possible conference date
April 1, 1993.	June 2, 1993	August 1, 1993.
May 14, 1993.	August 13, 1993	October 11, 1993.

Applications must be submitted on or before the deadline date to: Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications for the first cycle that do not meet the criteria in 1.A or 1.B. above are considered late applications and will be placed into consideration for the next cycle. Applications for the second cycle that do not meet the criteria in 1.A or 1.B. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number, and will need to refer to Announcement Number 310. You will receive a complete program description, information on application procedures, a listing of the relevant Healthy People 2000 HIV objectives and an application package containing the addresses and phone numbers for the contact personnel. Mr. Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, will provide the business management and technical assistance. Programmatic technical assistance may be obtained from Mr. Dave Brownell, Program Analyst, Office of the Associate Director for HIV AIDS, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–40, Atlanta, GA 30333, (404) 639–2918. Please refer to Announcement Number 310 when requesting information and when submitting your application in response to the announcement.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–0473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Dated: December 14, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 92–30849 Filed 12–18–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[FDA–225–91–6000]

Memorandum of Understanding Between the Food and Drug Administration and the Centers for Disease Control for Radiation Emergency Response Planning and Radiation Emergency Response Actior

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a revised memorandum of

understanding (MOU) between FDA and the Centers for Disease Control. The purpose of the revision is to update and extend a previous MOU describing the responsibilities of each agency in the event of peacetime radiological emergencies. This MOU describes how emergency planning and action will be coordinated with regard to radiological accidents that may have an impact on public health and safety.

DATES: The agreement became effective on September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Donald L. Thompson, Office of Health Physics (HFZ–60), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2850.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this memorandum of understanding.

Dated: December 4, 1992.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between the Centers for Disease Control and the Food and Drug Administration for Radiation Emergency Response Planning and Radiation Emergency Response Action

Preamble

Preamble

Over the past decade, the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA) have taken cooperative action to implement the Assistant Secretary for Health's (ASH) May 30, 1979, directive designating CDC as the lead agency within the Public Health Service (PHS) for health management of toxic environmental emergencies. This directive facilitates intramural communications and liaison with outside groups and ensures a prompt coordinated Federal response to environmental emergencies that endanger public health and safety. CDC's lead responsibility encompasses emergencies involving potential exposure to radiation, e.g., the accident at Three Mile Island. In a September 5, 1979, memorandum to the then Acting Commissioner of Food and Drugs, the Assistant Secretary for Health endorsed an active role for the Bureau of Radiological Health of FDA in radiation emergencies because of its specialized expertise for radiation emergency response planning. (In 1984 the Bureau was merged with the Bureau of Medical Devices of FDA and renamed the Center for Devices and Radiological Health.) The CDC and the FDA, in 1980, developed a memorandum of understanding (MOU) to describe the respective responsibilities of each agency with regard to peacetime radiological emergencies and how emergency planning and action will be coordinated.

Purpose and Scope

The purpose of the present memorandum of understanding is to revise and extend the previous MOU to reflect current activities and responsibilities of each agency. This document is concerned with radiological accidents which might have an impact on public health and safety. It does not include nonemergency environmental radiation problems (e.g., the dose reconstruction at the Hanford site).

Authority

FDA and CDC shall continue to act under existing delegations of authority, and no transfer of statutory functions or authority is implied by this MOU.

1. Both CDC and FDA derive authority from the Public Health Service Act (42 U.S.C. 241 *et seq.*), which provides authority for the conduct of health studies and the provision of guidance, assistance, and information on both health matters and for health emergencies. The Secretary of HHS is authorized to provide for cooperative planning to cope with health problems resulting from disasters, for participation in carrying out such planning, and, at the request of state and local authorities, in meeting health emergencies.

2. The FDA is responsible for enforcement of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394), the Radiation Control for Health and Safety Act (21 U.S.C. 360gg-360ss), the Public Health Service Act as it pertains to regulation of biological products (21 U.S.C. 262 *et seq.*), other sections of the PHS Act, and other laws. In fulfilling its responsibility under these laws, FDA protects the public health and safety by, inter alia, preventing the adulteration of or controlling adulterated products such as foods, drugs, cosmetics, medical devices, animal feeds, and human biologicals. It also protects the public from the dangers of electronic product radiation.

3. On December 7, 1979, the President directed the Federal Emergency Management Agency (FEMA) to take the lead in activities associated with the off-site planning and response to all peacetime radiological accidents at nuclear facilities. Because of its leadership role, he further directed FEMA to undertake a series of activities including the development and issuance of updated interagency assignments delineating respective agency capabilities and responsibilities. FEMA outlined such responsibilities in 44 CFR Part 351. Planning and response activities were gradually extended to address sources of potential exposure other than nuclear power facilities, e.g., terrorist nuclear devices, and nuclear powered orbital and space vehicles. In 1988, the Federal Radiological Emergency Response Plan (FRERP) was identified as a component of the President's National Security Emergency Preparedness Policy (E.O. 12656).

FDA Responsibilities

1. *Response Planning*

FDA will be responsive to CDC's request for representation on task forces and coordinating committees relating to the FRERP.

The FDA Regional Offices will each appoint a representative to serve on Regional Advisory Committees, and participate in Federal Radiological Monitoring and Assessment Center activities. (A second representative will be appointed by each PHS Regional Office.)

FDA will coordinate the development of FEMA guidance for HHS responsibilities that clearly fall under FDA's jurisdiction and expertise. Specifically, FDA will maintain the responsibility for the following:

A. Provide guidance to state and local governments on the use of radioprotective substances (e.g., thyroid blocking agents) to include dosage and also projected radiation doses at which such drugs should be used.

B. Provide guidance to State and local governments on protective action guides for foods and animal feeds.

FDA will keep CDC regularly informed, and CDC will be requested to provide, as deemed appropriate, review and comments on the overall PHS perspective on the items mentioned above.

FDA will in cooperation with CDC work with Regional Advisory Committees to provide appropriate technical review and comment in areas of FDA responsibility.

FDA will provide technical assistance to CDC in developing and implementing HHS Radiological Emergency Preparedness Training Programs.

2. *Emergency Response Actions*

When FDA is alerted to a radiation emergency, it will immediately alert CDC.

In accordance with specific state, regional, or national plans, this MOU, and specific requests by CDC, FDA will:

A. As part of the HHS team, participate in the radiological emergency exercises, tests, and responses.

B. Establish appropriate emergency response liaison with the on-site CDC designated coordinator and keep CDC headquarters advised.

C. Provide technical support to State, local and other Federal agencies.

FDA will implement and coordinate its own Emergency Response Procedures as set forth in Chapter 5–10 of the FDA Regulatory Procedures Manual. Radiological emergency responses include such actions as:

A. Environmental monitoring and sampling of milk, foods, and animal feed following a radiological incident.

B. Analysis and interpretation of food and environmental monitoring data.

C. Taking appropriate compliance actions and implementing protective actions for contaminated food and feed under the statutory authority of tne Federal Food, Drug, and Cosmetic Act and other Acts administered by FDA.

FDA will provide technical suppport to CDC for the preparation of HHS news releases, for coordination with other agencies, and for informing the public media about health significance of a radiological incident.

FDA will give CDC emergency contact telephone numbers for maintaining close liaison in case an emergency response action becomes necessary and for implementing HHS resources.

CDC Responsibilities

1. *Response Planning*

CDC has the lead role within PHS for planning the HHS role in the FEMA national response to radiation emergencies. This includes the following activities:

A. CDC is responsible for arranging HHS representation on the Federal Radiological Preparedness Coordinating Committee (FRPCC) and designating membership on relevant FRPCC subcomittees (e.g., FDA represents HHS on five task forces).

B. CDC arranges for appropriate PHS representation at meetings of all Regional Advisory Committees (RAC).

C. CDC participates in FEMA activities related to planning for radiation emergencies including coordinating the HHS response to review of FEMA documents relating to radiation emergencies.

D. CDC arranges for consultations between appropriate HHS components and state and local agencies and officials to help them plan for radiation emergencies in their jurisdiction.

E. CDC has the lead role for developing specific PHS response for implementation of the FRERP.

2. *Emergency Response Actions*

CDC has the PHS lead role to coordinate PHS response to radiological emergencies.

When notified of a radiological emergency, CDC:

A. Obtains sufficient information to allow a determination to be made of whether or not an emergency requiring HHS action exists.

B. Alerts all appropriate HHS agencies.

C. Consults with other HHS agencies to determine availability of resources required under the FRERP.

D. Requests mobilization of resources of PHS agencies.

CDC serves as the focal point for communication and coordination of information within PHS and between PHS and other Federal agencies, including designation of an on-site PHS coordinator at the scene of the emergency.

CDC develops and maintains epidemiological surveillance of populations exposed to radiological accidents and emergencies at local, State, and national levels for purposes of disease prevention.

As coordinator for PHS emergency response and liaison with FEMA, CDC consults with other HHS agencies, State and local authorities to:

A. Identify segments of the population which may be at high risk of harm from exposure (e.g., people with predisposing clinical conditions, children, pregnant women, the elderly).

B. Arrange for collection and analysis of appropriate biological specimens.

C. Consult on recommendations for decontamination and prophylactic procedures.

Names and Addresses of Participating Agencies:

Centers for Disease Control, 1600 Clifton Road NE., Atlanta, GA 30333,

Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Liasion Officers:

CDC: Emergency Response Coordinator, Office of the Director, Center for Environmental Health and Injury Control

FDA: Health Physicist, Office of Health Physics, Center for Devices and Radiological Health

Approved and Accepted for the Centers for Disease Control:

Elvin Hilyer

Title: Associate Director for Policy Coordination, Centers for Disease Control

Date: September 10, 1992

Approved and Accepted for the Food and Drug Administration:

Ronald G. Chesemore

Title: Associate Commissioner for Regulatory Affairs, Food and Drug Administration

Date: September 10, 1992.

[FR Doc. 92–30806 Filed 12–18–92; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Notice of Availability of the HHS Report on the Management of Research Costs

Department of Health and Human Services (HHS) Secretary Sullivan has released to the public the report, Management of Research Costs: Indirect Costs, that was prepared under the auspices of the HHS Working Group on the Costs of Research. The Working Group was composed of Dr. Bernadine Healy, Director, National Institutes of Health (NIH); Mr. Arnold Tompkins, Assistant Secretary for Management and Budget, HHS; and Mr. Richard Kusserow, then HHS Inspector General.

Secretary Sullivan formally accepted the report on October 14, 1992, and transmitted it to the Office of Management and Budget (OMB) for consideration within the context of the ongoing study of the costs of research being carried out by OMB and the Office of Science and Technology Policy.

Copies of the report are available to the public. Interested parties should send a telefax to Editorial Experts Inc. on (703) 683–4915. (If a telefax is unavailable, direct requests may be made by telephone on (703) 683–0683.) The telefax should include the requestor's name, address, and telephone number. The report will be sent via regular U.S. mail. There is a limit of one copy per requestor. Previous requests were distributed as of November 25, 1992 (one copy only).

Dated: December 8, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92–30846 Filed 12–18–92; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the National Heart, Lung, and Blood Special Emphasis Panel on Institutional National Research Service Awards (T32), December 17, 1992, 5333 Westbard Avenue, room 550, Bethesda, Maryland, which was published in the **Federal Register** on December 10, 1992. (57 FR 58512).

The meeting was canceled due to complications of other commitments of several members of the Panel and will be rescheduled at a later date.

Dated: December 15, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–30845 Filed 12–18–92; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Privacy Act of 1974; Report of Altered System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Altered system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of our intent to alter the system of records entitled "Disability Insurance and Supplemental Security Income Demonstration Projects and Experiments System HHS/SSA/ORSIP, 09–60–0218." The proposed alterations will expand the categories of individuals covered by, and the categories of records maintained in, the system. We also are making other editorial and technical revisions to the system to make it more accurate and up to date. We invite public comments on this publication.

DATES: We filed a report of an altered system of records with the Chairman, Committee on Government Operations of the House of Representatives; the Chairman, Committee on Governmental Affairs of the Senate; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 11, 1992. We have requested OMB to waive the 60-day advance notice period for this system. If OMB does not agree to waive the advance notice period, the proposed altered system will become effective on February 11, 1993, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Brenner, Program Analyst, Office of Disability, Social Security Administration, Room 545 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965–9181.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Alterations

A. Background

Section 505 of Pub. L. 96–265, as amended, requires SSA to test alternative methods of stimulating the return to work of disabled Social Security beneficiaries and Supplemental Security Income (SSI) recipients and applicants. One such alternative method SSA is testing is Project NetWork.

Project NetWork is a randomized field experiment testing four different service delivery models that are designed to increase opportunities for SSA clients with disabilities to receive the services they need to work. Through the establishment of case management-based systems, Project NetWork will provide access to an entire range of services necessary for a work attempt, including job placement and services on the job. It is a significant effort by SSA to take direct responsibility for helping people with disabilities to enter or reenter the workforce.

Case/referral managers, working in or near SSA field offices (FO), will collaborate with other public and private organizations to arrange for the rehabilitation services and employment for project participants. In two of the models, the case/referral managers are SSA employees. In the remaining two models, the case managers are under contract to SSA and are either State vocational rehabilitation agency counselors or private sector case managers. In addition, a private sector contractor will conduct an evaluation of the project. This contractor's responsibility will include interviewing samples of participants (treatment and control) and nonparticipants in each model.

Social Security Disability Insurance (DI) beneficiaries and individuals who apply for or receive SSI payments on the basis of a disability or blindness and applicants who concurrently apply for DI and SSI benefits/payments on the basis of disability or blindness who live in the FO service areas will be eligible to volunteer for participation in Project NetWork. Volunteers will be randomly assigned to either a treatment group or a control group.

B. Proposed Alterations

We propose to make two major alterations to the DI and SSI Demonstration Projects and Experiments System to provide for Project NetWork and other demonstration projects and experiments that SSA has undertaken and plans to implement and test in the future. Project NetWork is a new demonstration project designed to serve a wider population than this system of records currently covers.

1. Expansion of Categories of Individuals Covered by the System

The system currently covers the following categories of individuals:

- Sample groups of title II DI applicants and DI beneficiaries who are newly awarded or longer term (those on the rolls for 3–5 years) and their auxiliary beneficiaries; persons selected from temporary State DI programs; and the representative payees of these individuals; and
- Title XVI individuals receiving benefits on the basis of disability who are medically determined to be drug addicted or alcoholic, mentally retarded or developmentally disabled, and their representative payees.

In order to provide for Project NetWork as well as for additional projects and experiments that SSA has undertaken and plans to implement and test in the future, we are proposing to expand the categories of individuals covered by the system to include:

- Title II DI beneficiaries (regardless of the length of time they have been on the rolls); and their representative payees; and
- Individuals who apply for or receive title XVI payments on the basis of a disability or blindness (regardless of their disabilities) and their representative payees.

2. Expansion of Categories of Records in the System

The system currently contains various data relating to employment demographics, education, family history, medical and rehabilitation history and other data SSA collects and uses in demonstration projects to encourage disabled SSA clients to work. We are expanding the categories of records maintained to include earnings information subject to the provisions of section 6103 of the Internal Revenue Code (IRC).

II. Collection and Maintenance of Data

Information regarding Project NetWork clients will be obtained by the case/referral managers via interviews, meetings, telephone conversations, and correspondence with the clients, their families and caregivers, service providers, and employers. The Project NetWork data base also will maintain data obtained from other SSA data bases regarding project participants. The contractor performing the project evaluation also will obtain information regarding a sample of project participants and nonparticipants via personal interviews with participants and nonparticipants.

Information collected regarding these individuals will be maintained and retrieved by the Social Security number.

III. Proposed New/Amended Routine Use Disclosure of Data in the System

We are proposing to establish the following routine use of information which will be maintained in the system: *Disclosure may be made to the Internal Revenue Service (IRS), for the purpose of auditing SSA's compliance with the safeguard provisions of the IRC of 1986, as amended.*

This routine use will allow SSA to disclose information from the proposed system to IRS to permit IRS to audit SSA's maintenance of tax return information subject to the Internal Revenue Code (IRC).

Other routine uses in the system also are amended to clarify that SSA disclosures of tax return information will be subject to IRC restrictions.

IV. Effect of the Proposed Alteration on the Rights of Individuals

We are taking every precaution to ensure that the proposed alterations to the system do not have an adverse effect on the privacy or other rights of the individuals covered by the system. Project NetWork and additional demonstration projects and experiments SSA has undertaken and plans to implement and test in the future will be conducted in accordance with the requirements of the Privacy Act. We have guaranteed that no beneficiary or recipient will suffer any disadvantage by his or her participation in Project NetWork. This includes the data collection efforts that are conducted as part of the project. We will inform project participants of the types of information being disclosed, to whom, and for what reasons. Likewise, we will ensure that individuals/organizations to whom personal information is released, understand the rights of the individual and penalties for violating the Privacy

Act requirements. Furthermore, we will not share with the public or any other Federal agencies the information that is collected except to serve SSA's purposes directly related to this project. In light of the above, we do not anticipate any adverse effect of the proposed alterations on the rights of individuals.

V. Editorial and Technical Revisions to the Notice of the System

We have made editorial changes throughout the notice. We also have revised the sections of the notice of the system noted below to make it more accurate and up to date.

System name: Deleted the abbreviations "DI" and "SSI" and replaced "ORSIP" with "ORS" to reflect the acronym of the component (Office of Research and Statistics) that now has responsibility for the system.

System location: Updated the addresses of the components that maintain records and added information reflecting an additional records location.

Authority for maintenance of the system: Included additional legal authorities for maintenance of records in the system.

Purposes: Revised the language in this section to reflect the additional legal authorities for demonstration projects conducted by SSA and the restrictions imposed by the IRC on the disclosure of some types of records added to the system.

Safeguards: Revised this section to reflect the correct citation of the manual which specifies the safeguards SSA employs to protect records in the system.

System manager(s) and addresses: Revised this section to reflect the correct title and address of the system manager.

Notification procedures: Revised the language in this section to reflect the current Agency practice.

Record source categories: Revised this section to reflect the source of the "earning records" (tax return information) that will be maintained in the system.

Dated: December 11, 1992.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

09-60-0218

SYSTEM NAME:

Disability Insurance and Supplemental Security Income Demonstration Projects and Experiments System, HHS/SSA/ORS.

SYSTEM LOCATION:

Social Security Administration, Office of System Operations, 6201 Security Boulevard, Baltimore, MD 21235

Social Security Administration, Office of Research and Statistics, 4301 Connecticut Avenue, NW., Washington, DC 20008

Certain SSA field locations: Addresses may be obtained by writing to the system manager at the address below.

Contractor sites: Contractor addresses may be obtained by writing to the system manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Persons in sample groups of Social Security title II applicants, disability insurance (DI) beneficiaries and their auxiliary beneficiaries; persons selected from State temporary DI programs; other persons who are representative payees of these persons and temporarily disabled persons receiving State benefits (nonapplicants) in comparison groups for the vocational rehabilitation (VR) demonstrations.

B. Persons in sample groups of individuals who apply for or receive Social Security title XVI Supplemental Security Income (SSI) payments on the basis of a disability or blindness in general and particularly those who are medically determined to be drug addicted or alcoholic, mentally retarded or developmentally disabled, and representative payees of those individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains records which are used for statistical and research analysis only, as well as other records which will be used to conduct program functions involving the demonstrations and experiments. Tax return information, the disclosure of which would violate section 6103 of the Internal Revenue Code (IRC), will be used solely for internal Social Security Administration (SSA) purposes and will not be disclosed to other entities. Participants will be informed at the time of data collection that information obtained by survey or interview exclusively for statistical and research purposes will be protected from disclosure for other purposes to the fullest extent permissible by law.

Records in the system consist of data relating to the following: Demographic characteristics, education, marital status, military service, dependents, family and household composition; medical history (mental and physical); medical expenses, disability characteristics and health information; living arrangements, health insurance coverage and use; medical and rehabilitation services; employment; occupation and industry classification; income (including tax return information subject to section 6103 of the IRC); earnings and expenditures; referrals to and participation in the SSI and related Federal/State welfare programs; benefits received; types of cost of services under DI, SSI and related Federal/State welfare programs; reasons or circumstances of closure; attitudes toward work, rehabilitation or treatment programs; impairment-related work expenses; workers' compensation benefits; job search methods; knowledge and understanding of provisions affecting entitlement to benefits; also, for SSI projects only, driver's license and alcohol and drug use (disclosure of this information may be restricted by 21 U.S.C. 1175 and 42 U.S.C. 4582).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 222, 702 and 1110 of the Social Security Act and section 505 of Public Law (Pub. L.) 96-265 (the Social Security Disability Amendments of 1980), as amended by section 12101 of Pub. L. 99-272, section 10103 of Pub. L. 101-239 and section 5120 of Pub. L. 101-508.

PURPOSE(S):

The purpose of this system is to provide SSA with data necessary to carry out and evaluate demonstrations and experiments for testing alternative approaches to continuing benefit eligibility during employment and to the rehabilitation of title II DI beneficiaries and individuals who apply for or receive title XVI SSI payments on the basis of a disability or blindness and, to report to Congress as required by section 505 of Public Law 96-265, as amended by section 12101 of Public Law 99-272, section 10103 of Public Law 101-239 and section 5120 of Public Law 101-508.

Except for tax return information, and records collected by means of surveys or interviews for use solely for research and statistical purposes, SSA may also provide information from this system to other components of the Department of Health and Human Services (HHS), e.g., the HHS Health Care Financing Administration (HCFA) for the purpose of determining eligibility for Hospital Insurance (HI) benefits or Supplementary Medical Insurance (SMI) benefits under the demonstrations and experiments and for the purpose of obtaining data from HCFA on HI and SMI utilization during the demonstrations and experiments; to State disability determination units for the purpose of making disability

determinations; and to State VR agencies for the purpose of screening DI beneficiaries and SSI recipients for VR potential and designing and implementing a plan of VR services for accepted beneficiaries and recipients.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES FOR USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed for routine uses as indicated below:

1. With respect to any records, including those collected by means of survey or interview to be used solely for research and statistical purposes, disclosure may be made:

(a) To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

(b) Subject to any restrictions imposed by section 6103 of the IRC, to a contractor under contract to SSA, for the performance of research and statistical activities directly related to this system of records in conducting the demonstrations and experiments and to provide a statistical data base for research studies.

2. With respect only to records that are not collected by means of surveys or interviews for use solely for research and statistical purposes, disclosure may be made subject to any restrictions imposed by section 6103 of the IRC:

(a) To a third party organization under contract to SSA for the performance of project management activities directly related to this system of records.

(b) To a State VR agency in the State in which the disabled individual resides, for the purpose of assisting the agency in providing rehabilitation counseling and service to the individual that are necessary in carrying out the demonstrations and experiments.

3. To the IRS, for the purpose of auditing SSA's compliance with the safeguard provisions of the IRC of 1986, as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system may be stored in paper form (e.g., hard copy questionnaires, punch cards and computer printouts), on microfilm and in magnetic media (e.g., magnetic tape and disc).

RETRIEVABILITY:

Records in this system are indexed and retrieved by the Social Security number (SSN).

SAFEGUARDS:

Safeguards have been established for automated records in accordance with the HHS Information Management Manual, Part 6, Automated Information Systems Security Program Handbook. This includes maintaining the records in a secured building, such as the SSA National Computer Center (NCC). Entry into the NCC is restricted to employees whose duties require such entry. Special passes including the employees' photographs are issued to all personnel authorized to enter the NCC. The employees are required to wear their passes at all times. Marshals are stationed in the lobby of the center to ensure that only those employees authorized to enter the NCC do so.

Manually maintained records are kept in locked cabinets or in otherwise secure areas. Access to the records is limited to those employees who require the information to perform their assigned duties. SSA employees and employees of contractors having access to the records in this system have been notified of criminal sanctions for unauthorized disclosure of information about individuals.

Contractor use of records is restricted to performing the duties of the contract, and contractors are required to establish adequate safeguards to protect personal information. Additionally, contractors and their employees are subject to criminal penalties for violations of the Privacy Act.

RETENTION AND DISPOSAL:

Magnetic tapes or other files with personal identifiers are retained in secured storage areas accessible only to authorized personnel.

Microdata files prepared for purposes of research and analysis are purged of personal identifiers and are subject to procedural safeguards to assure anonymity.

Hardcopy questionnaires will be destroyed when survey reports are completed. Records with identifiers will be held in secure storage areas and will be disposed of as soon as they are determined to be no longer needed for SSA analysis.

Means of disposal are appropriate to the storage medium (e.g., erasure of tapes, shredding of paper records). Records used in administering the demonstration and experimental programs are retained indefinitely.

System manager(s) and addresses: Associate Commissioner, Office of Research and Statistics, Social Security Administration, 4301 Connecticut Avenue, NW., Washington, DC 20008.

Notification procedures: An individual can determine if this system contains a record about him or her by writing to the system manager at the above address and providing name, address and SSN. (Furnishing the SSN is voluntary, however, it would make searching for the individual's record easier and avoid delay. An individual who is unable or unwilling to furnish his or her SSN will be required to provide other information such as date and place of birth and both parents' names to enable us to locate the record.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he or she would normally carry on his or her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his or her name, date of birth and address in order to establish identity, plus any additional information specified in this section. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

Record access procedures: Same as notification procedures. Also, requesters should reasonably identify the record and specify the information they are attempting to obtain. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

Contesting record procedures: Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

Record source categories: Records in this system are derived in part from other SSA systems of records (e.g., the Earnings Recording and Self-Employment Income System (09–60–0059), the Claims Folders System (09–60–0089) (disability case folders), the Master Beneficiary Record (09–60–0090) and the Supplemental Security Income Record (09–60–0103)); other SSA administrative records; program records of other Federal/State welfare programs survey data collected by contractors or SSA personnel; from the individual; the Health Insurance Master Record (09–70–0502) of HHS/HCFA; case service reports of VR agencies and referral and monitoring agencies; and employers.

Systems exempted from certain provisions of the Privacy Act: None.

[FR Doc. 92–30878 Filed 12–18–92; 8:45 am]
BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-5101-10-YBEA, CA-24661]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to assess environmental impacts of a natural gas pipeline.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) is initiating an Environmental Assessment of a natural gas pipeline. The Southern California Gas Company (The Gas Company) has applied for an amendment to their Right-of-Way Grant under 43 CFR 2880 to construct, operate, and maintain a 36 inch natural gas pipeline to deliver natural gas to its load center south of the Riverside-Imperial County line. The California Desert Conservation Area (CDCA) Plan identified two pipelines along the proposed alignment across Federal land, but is silent on amending existing Grant's where substantial changes are involved. If approved, the BLM would allow construction of a new natural gas pipeline to replace one of the existing pipelines that will either be abandoned or removed.

DATES: Written comments must be submitted by January 21, 1993.

ADDRESSES: Written comments should be sent to: District Manager, ATTN: SCG Pipeline Project, Bureau of Land Management, California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507-0714.

FOR FURTHER INFORMATION CONTACT: Stephen L. Johnson, Special Projects Manager, California Desert District Office, (714) 697-5234.

SUPPLEMENTARY INFORMATION: The Gas Company is a privately-owned natural gas utility regulated by the State of California with a service territory that includes Imperial County and most of Southern California south of Fresno, California. The Gas Company conducted planning studies to determine capacity requirements for its transmission system and, as a result, these studies indicated a need for this project.

Initial engineering and environmental studies determined that the proposed pipeline should start from the existing natural gas transmission pipelines which parallel Interstate 10 at a location approximately 3 miles west of Eagle Mountain Road and proceed south. The proposed alignment of the new pipeline will follow a route parallel to two existing natural gas pipelines. This proposed 32 mile pipeline segment will be 36 inches in diameter and will cross both public lands administered by the BLM and the U.S. Navy's Chocolate Mountains Aerial Gunnery Range. The initial environmental studies identified both desert tortoise habitat along the route and unexploded ordinance on the Range as issues.

The proposed pipeline will replace the older of the two existing natural gas pipelines that presently serve multiple communities south of the Riverside County line. The aforementioned existing pipeline, which will be removed from service after installation of the new line, was installed in 1948 and will require increasingly significant significant maintenance and repairs if it is to be kept in service.

The route of the proposed pipeline will closely follow the existing pipeline patrol road and will be installed and operated in accordance with all applicable State and Federal pipeline safety regulations and environmental requirements. Furthermore, if approved, this new pipeline will improve existing gas service to customers in the Imperial Valley by providing a higher level of service to them.

The Environmental Assessment (EA) will evaluate the effects of constructing, operating and maintaining this proposed natural gas pipeline from its point of origin to its initial point of termination. The EA will also address the abandonment or removal of the existing pipeline which will be replaced by this new 36 inch line. It is anticipated that this Environmental Assessment will be completed by the second quarter of 1993.

Dated: December 15, 1992.

Molly S. Brady,

Acting California Desert District Manager.

[FR Doc. 92-30919 Filed 12-18-92; 8:45 am]

BILLING CODE 4310-40-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32182]

CSX Corporation and CSX Intermodal, Inc.—Control—Customized Transportation, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts CSX Corporation (CSX) and its subsidiary, CSX Intermodal, Inc. (CSXI), from the regulatory requirements of 49 U.S.C. 11343, *et seq.*, for the acquisition by CSX, CSXI, and other CSX carrier affiliates of control of Customized Transportation, Inc. (CTI).

DATES: This exemption is effective on December 24, 1992. Petitions to reopen must be filed by January 11, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32182 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives: Peter J. Shudtz, One James Center, Richmond, VA 23219. Robert B. Allen, 200 International Circle, Hunt Valley, MD 21030.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610. [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5621].

Decided: December 9, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-30870 Filed 12-18-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-382X]

Floydada & Plainview Railroad—Abandonment—In Hale and Floyd Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission pursuant to 49 U.S.C. 10505 exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.* the abandonment by the Floydada & Plainview Railroad of 22.4 miles of rail line between milepost 4+3160 near Plainview and milepost 27+158.4 at Floydada, in Hale and Floyd Counties, TX subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 31, 1992. Formal expressions of intent to file offers of financial

assistance [1] under 49 CFR 1152.27(c)(2) must be filed by December 31, 1992. Petitions to stay must be filed by December 31, 1992. Petitions to reopen must be filed by January 11, 1993. Requests for a public use condition must be filed by January 11, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–382X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: John D. Heffner, Gerst, Heffner, Carpenter & Precup, suite 1107, 1700 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: December 10, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–30871 Filed 12–18–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Cable Television Laboratories, Inc.; National Cooperative Research

Notice is hereby given that, on October 16, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and Les Enterprises Videoway Inc. ("Videoway") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are CableLabs, Boulder, CO; and Videoway, Montreal, Quebec, Canada.

The area of planned activity is cooperation in the development of data stream protocols concerning the delivery of data over cable television system facilities to cable television subscribers.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–30814 Filed 12–18–92; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research; Cable Television Laboratories, Inc.

Notice is hereby given that, on October 16, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and Sony Corporation of America ("Sony") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are CableLabs, Boulder, CO; and Sony, Montvale, NJ.

The area of planned activity is cooperation in the exchange of information about cable network architecture and design and digital transmission of cable television signals.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–30813 Filed 12–18–92; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs; Bureau of Justice Assistance

State Reimbursement Program for Incarcerated Mariel Cubans

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA), Justice.

ACTION: Notice of issuance of solicitation for applications to reimburse States for partial expenses incurred by the incarceration of certain Mariel Cubans.

SUMMARY: The Department of Justice Appropriations Act, 1993, Title I of Public Law 102–395, allocates up to $2.5 million to implement the State Reimbursement Program for Incarcerated Mariel Cubans. The State Reimbursement Program for Incarcerated Mariel Cubans provides assistance to the States to defray expenses associated with the incarceration of Mariel Cubans in State facilities. Mariel Cubans affected by the Act are those individuals incarcerated after conviction of a felony, following their parole by the Attorney General. The 1980 Mariel Cuban Boatlift placed an added burden upon the criminal justice systems of many states with the additional costs of incarceration. For reimbursement purposes, the period of incarceration is October 1, 1992, to September 30, 1993.

DATES: The State applications (S.F. 424) must be postmarked no later than February 1, 1993. All inmate data must be electronically transmitted by the applicant to the Bureau of Justice Assistance for verification purposes no later than February 1, 1993.

ADDRESSES: Bureau of Justice Assistance, Special Programs Division, 633 Indiana Avenue, NW., room 1058, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Telephone Louise Lucas, BJA, at (202) 307–1065.

SUPPLEMENTARY INFORMATION: On October 18, 1991, BJA mailed to all State departments of corrections a survey to determine the feasibility of establishing an electronic data entry system for the Mariel Cuban Reimbursement Program. Based on the completed surveys from 46 States, BJA determined that the electronic data entry system would enhance the operation of the program as well as reduce the paper flow of documents from the States. BJA, under separate cover, will provide to the States the necessary information needed to access the automated data entry system.

I. General Provisions

Eligible Applicants

All States are eligible to apply for and receive grants. "State" means any State of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating States

BJA expects that the 38 States that participated in the State Reimbursement Program last year will participate again this year. States participating in 1992 included: Alaska, Arkansas, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland,

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. Some additional States may participate in 1993.

II. Allocations and Use of Funds

Fund Availability

The Act provides a total of $2.5 million for the purpose of making grants to States. Awards will be calculated by taking the aggregate number of verified inmate months from all applications submitted and dividing the months into the appropriation. The verified number of months for each application will then be multiplied by the average inmate cost per month. The amount of reimbursement per prisoner, per annum, will not exceed $12,000.

Fund Use

The intent of the public law is to reimburse the States for partial expenses incurred by them for Mariel Cubans incarcerated in State facilities. A budget or expenditure plan is not required, as the award will be used solely for reimbursement purposes. Matching funds are not required.

III. Application Content

(a) All State applicants must submit Standard Form 424 (Application for Federal Assistance), and a certified listing of incarcerated Mariel Cuban prisoners. The certified listing shall be a "hard copy" of the electronically transmitted inmate data to BJA. The automated data entry system is designed to include information in the following sequence:

(1) Name (last name first).
(2) AKA (also known as).
(3) Alien Identification Number (e.g., A24 456 789).
(4) Inmate Number.
(5) Date of Birth.
(6) Date of Incarceration.
(7) Probable Earliest Release Date.

Submission of Mariel Cuban data in an alternative format must be approved by BJA prior to submission of an application.

(b) The certified listing must be signed by the Governor or one of his or her authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1992, to September 30, 1993. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a 12-month period (e.g., if two prisoners are incarcerated for six months during the period, the State will be reimbursed the equivalent of the full amount for one prisoner for one year).

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General during the 1980 influx of Mariel Cubans. States will not be reimbursed for those Cubans who Entered Without Inspection (EWI), or who were earlier arrivals (pre-boatlift), or later arrivals (post-boatlift).

(e) State law will prevail when a determination is required as to what constitutes a State facility and/or a State prisoner.

IV. Review of State Applications

State applications must be submitted in the required format within the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be completed no later than April 1, 1993, and grants will be made to the States immediately thereafter.

(b) Compliance is required with executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR part 30. At the same time applications (S.F. 424) are submitted to BJA, states must submit grant applications to the State's Single Point of Contact, if there is a Single Point of Contact, and if this program has been selected for coverage by the State process. State processes last 60 days starting from the application deadline to comment on applications.

(c) Certification is required regarding 28 CFR part 69, "New Restrictions on Lobbying" and 28 CFR part 67, "Government-wide Debarment and Suspension and Government-wide Requirements for Drug-Free Workplace" (OJP Form 4061/6). This form should be submitted by the State as part of its application.

(d) Upon completion of a review of a State application, BJA will notify the applicant, in writing, of any specific reasons for disapproval of the application, in whole or in part.

V. Civil Rights Assurances

The applying State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964;

(b) Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Subtitle A, Title I of the American With Disabilities Act (ADA) (1990);

(e) Title IX of the Education Amendments of 1972;

(f) The Age Discrimination Act of 1975; and,

(g) The Department of Justice Non-Discrimination Regulations, 28 CFR part 42, subparts C, D, E, and G, and Disability Non-discrimination Regulations, 28 CFR part 35 and part 39.

Any application for $500,000 or more must be accompanied by a copy of the current Equal Employment Opportunity Program in accordance with the provisions of 28 CFR 42.301 *et seq.* State applicants that previously applied for and received funding under this initiative, and have also received an Office of Justice Programs approval of their Equal Employment Opportunity Program, need only submit a statistical update of the previously approved program to meet this requirement.

Jack A. Nadol,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 92-30901 Filed 12-18-92; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may

request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 4, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 4, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this December 7, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Baroid Management Corp (Co)	Houston, TX	12/07/92	11/20/92	28,076	Drilling Fluids.
Kezar Falls Woolen Co (Wkrs)	Kezar Falls, ME	..... do	11/19/92	28,077	Woolen Yarns.
Beaver Dam Products Corp (AIW)	Beaver Dam, WI	..... do	11/18/92	28,078	Auto Parts, Engines.
Hallmark Fishery's (Wkrs)	Charleston, OR	..... do	11/20/92	28,079	Fresh and Frozen Seafood.
Blue Bird East (Wkrs)	Buena Vista, VA	..... do	11/23/92	28,080	Bus Bodies.
Lodge and Shipley, Inc (Wkrs)	Cincinnati, OH	..... do	11/23/92	28,081	Lathes.
Hadson Energy Resources Corp (Wkrs)	Oklahoma City, OK	..... do	11/20/92	28,082	Oil and Gas Services.
Beaver Lumber Co (Wkrs)	Beaver, WA	..... do	11/24/92	28,083	Lumber for Construc. of Doors and Windows.
Sutton Shirt Corp (Wkrs)	Sparta, TN	..... do	11/25/92	28,084	Sutton Garment Warehouse and Distribution.
Weatherford Petco Oilfield Service (Wkrs)	Lindsay, OK	..... do	11/25/92	28,085	Oil and Gas Services.
Ortech Co (Co)	Kirksville, MO	..... do	11/20/92	28,086	Electro-Mechanical Auto Components.
Atron, Inc., of Michigan (Wkrs)	Saranac, MI	..... do	11/20/92	28,087	Electrical Wire Harness for Autos.
Northwest Shingle Co (Wkrs)	Bogachiel Park, WA	..... do	11/24/92	28,088	Shingles and Shakes.
Carter Steel and Fabricating Co (Wkrs)	Bellefontaine, OH	..... do	11/17/92	28,089	Fabricated Structural Steel.
Acustar, Inc (Wkrs)	Dayton, OH	..... do	11/23/92	28,090	Auto Heaters & Air Conditioners.
TRW Vehicle Safety Systems, Inc (UAW)	Washington, MI	..... do	11/20/92	28,091	Seat Belt Components.
Cyprus Thompson Creek Mining Co (Wkrs)	Clayton, ID	..... do	11/30/92	28,092	Mine & Process Molybdenum Ores.

[FR Doc. 92-30897 Filed 12-18-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,807]

Carter Jasper Company; Jasper, GA

Notice of Revised Determination on Reconsideration

On December 4, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of Carter Jasper Company in Jasper, Georgia. This notice will soon be published in the **Federal Register**.

A company official claims that a major customer of Carter Jasper decreased its purchases of canvas footwear from Carter Jasper and increased its imports of canvas footwear in 1992.

The investigation findings show that the workers at Jasper produced injection molded canvas footwear. The findings also show that all production at Jasper ceased in October, 1992 and all production workers were laid off.

Other findings show that U.S. aggregate imports of non-rubber footwear increased absolutely and relative to domestic shipments in 1991 compared to 1990 and in the first six months of 1992 compared to the same period in 1991.

On reconsideration, the Department conducted a survey of Carter Jasper's customers. The survey showed that a major customer, accounting for a substantial portion of Jasper's sales in 1992, substantially reduced its purchases from Carter Jasper in mid-1992 and increased its imports of canvas footwear in 1992.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the Carter Jasper workers in Jasper, Georgia were adversely affected by increased imports of articles like or directly competitive with the canvas footwear produced at Carter Jasper in Jasper, Georgia. In accordance with the provisions of the Act, I make the following revised certification for the Carter Jasper workers in Jasper, Georgia.

"All workers of Carter Jasper Company in Jasper, Georgia who became totally or partially separated from employment on or after August 1, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 9th day of December 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-30893 Filed 12-18-92; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises the Mine Safety and Health Administration's (MSHA) user fees for testing, evaluation, and approval of certain products manufactured for use in underground mines. These fees are based on Fiscal Year 1992 data and reflect changes in approval processing operations as well as costs incurred to process approval actions.

DATES: These fee schedules are effective from January 1, 1993, through December 31, 1993. Approval applications postmarked January 1, 1993, or after will be chargeable under these fee schedules.

FOR FURTHER INFORMATION CONTACT: Peter M. Turcic, Chief, Approval and Certification Center, R.R. 1, Box 251, Triadelphia, West Virginia 26059.

SUPPLEMENTARY INFORMATION: In general, MSHA has computed the revised fees based on the cost to the government to provide testing, evaluation, and approval of products manufactured for use in underground mines. On May 8, 1987 (52 FR 17506), MSHA published a final rule, 30 CFR part 5—Fees for Testing, Evaluation, and Approval of Mining Products, which established the

specific procedures for fee calculation, administration, and revisions. This revised fee schedule is established in accordance with the procedures of that rule.

New approval programs, expected to be issued during 1993, and associated fees are listed in this notice. These include two subparts under part 7, Applicant or Third Part Testing, scheduled for issuance as final regulations in 1992: (1) Electric Motor Assemblies and (2) Electric Cables and Splice Kits. Fees for applications under these rules will be applicable on the effective dates as published in the final rules.

Fees under part 18, Action numbers 45 and 46, Shearer Evaluation and Shearer Evaluation Extension, represent programs previously in effect under approval programs for longwall equipment. Part 00, Action number 35, Administrative Records Update Program, is a new program representing a means for securing services to update changes in applicants' records, such as company transfers. These programs are in place and subject to the 1993 fee rates.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Fee Schedule Effective 01-01-93

[Based on FY 1992 data]

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
7	Product testing by third party:			
	12 Approval Evaluation—Battery Assemblies	$37		$100
	12 Approval Evaluation—Brattice and Ventilation Tubing	43		100
	12 Approval Evaluation—Multiple-Shot Blasting Units	41		100
	12 Approval Evaluation—Electric Motor Assemblies*	41		100
	12 Approval Evaluation—Electric Cables and Splice Kits*	40		100
	14 Approval Extension—Battery Assemblies	41		100
	14 Approval Extension—Brattice and Ventilation Tubing	41		100
	14 Approval Extension—Multiple-Shot Blasting Units	41		100
	14 Approval Extension—Electric Motor Assemblies*	41		100
	14 Approval Extension—Electric Cables and Splice Kits	40		100
	40 Stamped Notification Acceptance Program (SNAP)		$314	
15	Explosives:			
	12 Approval Evaluation[1]	43		100
	Permissibility Tests for Explosives:			
	Weigh-in		420	
	Physical Exam: First Size		295	
	Chemical Analysis		1,797	
	Air Gap—Minimum Product Firing Temperature		418	
	Air Gap—Room Temperature		320	
	Pendulum Friction Test		148	
	Detonation Rate		320	
	Gallery Test 7		6,760	
	Gallery Test 8		5,030	
	Toxic Gases (Large Chamber)		732	
	Permissibility Tests for Sheathed Explosives:			
	Physical Examination		128	
	Chemical Analysis		1,044	
	Gallery Test 9		1,944	
	Gallery Test 10		1,944	
	Gallery Test 11		1,944	
	Gallery Test 12		1,944	
	Drop Test		648	
	Temperature Effects/Detonation		672	
	Toxic Gases		580	
	14 Approval Extension		45	100
18	Electric motor driven equipment and accessories:			
	12 Approval—Machine Evaluation[1]	43		100
	Approval—Machine Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	12 Approval—Instruments (testing included)	42		100
	12 Approval—Shearer Evaluation	43		100
	14 Approval Extension—Machine Evaluation[1]	41		100
	Approval Extension—Machine Testing			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	14 Approval Extension—Instruments (testing included)	38		100
	14 Approval Extension—Shearer Evaluation	40		100
	15 Acceptance Evaluation[1]	40		100
	Acceptance Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	Cable/Splice Test	43		

FEE SCHEDULE EFFECTIVE 01–01–93—Continued

[Based on FY 1992 data]

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
	Cable Flame Test	42		
	Dielectric Test	45		
	Compressibility Test (asbestos substitutes)	45		
	16 Certification Evaluation[1]	38		100
	Certification Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	17 Acceptance Extension	40		100
	18 Certification Extension[1]	37		100
	Certification Extension Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	21 Field Modification	44		100
	23 Field Approval		88	
	26 Permit—Machines[1]	43		100
	Permit Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	26 Permit—Instruments (testing included)	43		100
	30 Intrinsic Safety Determination (testing included)	44		100
	31 Intrinsic Safety Determination Extension (testing included)	44		100
	32 Simplified Certification[1]	38		100
	Simplified Certification Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	34 Simplified Certification Extension[1]	37		100
	Simplified Certification Ext. Testing:			
	Explosion Test	36		
	Surface/Temperature Test	33		
	Impact Test	33		
	Thermal Shock Test	33		
	Product Flame Test	42		
	40 Stamped Notification Acceptance Program (SNAP)		314	
	41 Longwall Approval	43		100
	42 Longwall Approval Extension	43		100
	45 Shearer Evaluation	45		
	46 Shearer Evaluation Extension	40		
19	Electric cap lamps:			
	12 Approval (testing included)	41		100
	14 Approval Extension (testing included)	38		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
20	Electric mine lamp:			
	12 Approval (testing included)	42		100
	14 Approval Extension (testing included)	40		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
21	Flame safety lamps:			
	12 Approval (testing included)	41		100
	14 Approval Extension (testing included)	41		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
22	Portable methane detectors:			
	12 Approval (testing included)	40		100
	14 Approval Extension (testing included)	38		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
23	Telephones and signaling devices:			
	12 Approval (testing included)	42		100
	14 Approval Extension (testing included)	40		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
24	Single-shot blasting units:			
	12 Approval (testing included)	44		100
	14 Approval Extension (testing included)	44		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
26	Lighting equipment for illumination:			
	12 Approval (testing included)	44		100
	14 Approval Extension (testing included)	44		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
27	Methane monitoring systems:			
	16 Certification (testing included)	42		100

FEE SCHEDULE EFFECTIVE 01–01–93—Continued

[Based on FY 1992 data]

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
	18 Certification Extension (testing included)	38		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
28	D.C. current fuses:			
	12 Approval (testing included)	45		100
	14 Approval Extension (testing included)	45		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
29	Portable dust analyzers and methane monitors:			
	12 Approval (testing included)	41		100
	14 Approval Extension (testing included)		314	
31	Diesel mine locomotives:			
	12 Approval	41		100
	14 Approval Extension	41		100
32	Mobile diesel-powered equipment for noncoal mines:			
	12 Approval	41		100
	14 Approval Extension	41		100
	16 Certification Evaluation[1]	43		100
	Certification Testing:			
	Emisssions Test	44		
	Pre/post Test Preparation	42		
	18 Certification Extension Evaluation[1]	43		100
	Certification Extension Testing:			
	Emissions Test	44		
	Pre/post Test Preparation	42		
33	Dust Collectors:			
	12 Approval Evaluation without Cert. of Performance[1]	45		100
	Approval Testing:			
	Dust Collector Test	48		
	14 Approval Extension Evaluation[1]	44		100
	Approval Extension Testing:			
	Dust Collector Test	48		
	16 Certification Evaluation[1]	44		100
	Certification Testing:			
	Dust Collector Test	48		
	18 Certification Extension[1]	43		100
	Certification Extension Testing:			
	Dust Collector Test	48		
	21 Field Modification	47		100
	29 Dust Collector Approval with Cert. of Performance	45		100
	40 Stamped Notification Acceptance Program (SNAP)		314	
35	Fire-resistant hydraulic fluids:			
	12 Approval (testing included)[1]	40		100
	14 Approval Extension (testing included)	40		100
36	Mobile diesel-powered equipment:			
	12 Approval	45		100
	14 Approval Extension	45		100
	16 Certification—Engine Evaluation[1]	43		100
	Certification—Engine Testing:			
	Emissions Test	44		
	Explosion Test	42		
	Surface Temperature/Safety Controls Test	45		
	Pre/post Test Preparation	41		
	18 Certification Extension—Engine Evaluation[1]	40		100
	Certification Extension—Engine Testing:			
	Emissions Test	44		
	Explosion Test	42		
	Surface Temperature/Safety Controls Test	45		
	Pre/post Test Preparation	41		
	21 Field Modification	45		100
	27 Certification—Diesel Components Evaluation[1]	44		100
	Certification—Diesel Components Testing:			
	Emissions Test	44		
	Explosion Test	42		
	Water Consumption/Cooling Efficiency Test	41		
	Surface Temperature/Safety Controls Test	45		
	Pre/post Test Preparation	41		
	28 Certification Extension—Diesel Components Evaluation[1]	45		100
	Certification Extension—Diesel Components Testing:			
	Emissions Test	44		
	Explosion Test	42		
	Water Consumption/Cooling Efficiency Test	41		
	Surface Temperature/Safety Controls Test	45		
	Pre/post Test Preparation	41		
	40 Stamped Notification Acceptance Program (SNAP)		314	
74	Coal mine dust personal sampler units:			
	12 Approval	41		100
00	Other A&CC services:			
	15 Acceptance—Overcurrent Relays (testing included)	41		100
	15 Statement of Test and Evaluation (ST&E)		38	
	15 Monitor and Power System (MAPS) (testing included)	42		100

FEE SCHEDULE EFFECTIVE 01–01–93—Continued

[Based on FY 1992 data]

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
15	Acceptance—Ground Check Monitor/Ground Wire Devices (testing included)	41		100
17	Acceptance Extension—Overcurrent Relays	41		100
17	Acceptance Extension—Interim Criteria	40		100
17	Statement of Test and Evaluation (ST&E) Extension		32	
17	Acceptance Extension—Ground Check Monitor/Gr. Wire Devices	43		100
20	Stamped Revision Acceptance (SRA)[2]		194	
24	Acceptance—Panic Bar	41		100
33	Generic Statement of Test and Evaluation (ST&E)	41		100
35	Admin. Records Update	10		None
37	Acceptance—Interim Criteria	40		100
	Interim Criteria Testing:			
	Product Flame Test	40		
40	Stamped Notification Acceptance (SNAP)/Gr. Check Monitor, Ground Wire Device, and Overcurrent Relay.		314	
40	Stamped Notification Acceptance (SNAP) ST&E		32	
41	Approval—Longwall Area Lighting	43		100
42	Approval Extension—Longwall Area Lighting	41		100
50	Mine Wide Monitoring System (MWMS) evaluation		263	
52	Mine Wide Monitoring System (MWMS) Barrier Classification		248	
54	Mine Wide Monitoring System (MWMS) Sensor Classification		320	
00	Retesting for Approval as a Result of Post-approval Product Audit[3]			

*Fees will be applicable upon implementation of these Part 7 regulations; Final Rule expected during 1992.
[1] Note: Full approval fee consists of evaluation cost plus applicable test costs.
[2] Note: Fee covers SRA application accompanied by up to 5 documents.
[3] Note: Fee based upon the approval schedule in effect at the time of retest.

Note: When testing and evaluation is required at locations other than MSHA's premises, the applicant shall reimburse MSHA for traveling, subsistence, and incidence expenses of MSHA's representation in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 92–30841 Filed 12–18–92; 8:45 am]

BILLING CODE 4510–43–M

Occupational Safety and Health Administration

Maryland State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of subpart O to part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart O sets forth the State's schedule for the adoption of Federal standards. By letters dated October 19, 1992, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to amendments, corrections, and revisions to: (1) 29 CFR 1926.58, pertaining to the Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite Standard for the Construction Industry as published in the **Federal Register** of June 8, 1992 (57 FR 24330); (2) 29 CFR 1910.1001 and 1910.1101, pertaining to the Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite Standard for General Industry as published in the **Federal Register** of June 8, 1992 (57 FR 24330); and (3) CFR 1910.1048, pertaining to the Occupational Exposure to Formaldehyde Standard as published in the **Federal Register** of May 27, 1992 (57 FR 22307), June 10, 1992 (57 FR 24701), and June 18, 1992 (57 FR 27161). These standards are contained in COMAR 09.12.31. Maryland occupational safety and health standards were promulgated after a public hearing on September 22, 1992. These standards became effective on October 12, 1992.

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. Location of the Supplements for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, U.S. Department of Labor, room N3700, 3rd Street and Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Maryland State plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal

law including meeting the requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 21, 1992.

(Section 18, Public Law 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania, this 3rd day of November 1992.

Linda R. Anku,

Regional Administrator.

[FR Doc. 92–30892 Filed 12–18–92; 8:45 am]

BILLING CODE 4510–26–M

MERIT SYSTEMS PROTECTION BOARD

Opportunity To Comment on the 1993 Research Agenda of the U.S. Merit Systems Protection Board

December 1992.

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of opportunity to comment on the 1993 research agenda of the U.S. Merit Systems Protection Board.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is required by law to conduct special studies of the civil service and other Federal merit systems to determine whether they adhere to the merit principles governing the Federal civil service. MSPB is also required by law to report annually to the President and the Congress on the "significant actions" of the Office of Personnel Management (OPM). Based on this research, MSPB reports to the Congress and the President on whether the public interest in a civil service free of prohibited personnel practices is being adequately protected. MSPB is in the process of determining its 1993 research agenda. This notice invites public comment on personnel management issues to be considered as topics for merit systems studies, and solicits suggestions regarding OPM programs and activities to be included in the annual review and analysis of OPM signficant actions.

DATES: To ensure full consideration, comments should be received on or before January 25, 1993.

ADDRESSES: Comments must be made in writing and sent to the Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., 8th Floor, Washington, DC 20419, Attention: Mrs. Ligaya Fernandez.

FOR FURTHER INFORMATION CONTACT: Mrs. Ligaya Fernandez, Research Analyst, Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., 8th Floor, Washington, DC 20419, (202) 653–8737.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 established a list of statutory merit principles and prohibited personnel practices as standards for personnel management in the Federal Government. MSPB is responsible for protecting the public interest in a civil service administered according to these standards. The Office of Policy and Evaluation has principal responsibility within MSPB for OPM oversight and merit systems studies.

(a) What Is a Merit System Study?

The law does not specify criteria for MSPB to use in determining the scope and nature of merit systems studies. In exercising its discretion as to which studies to conduct, MSPB relies on its internal research staff as well as input from a broad range of outside individuals and organizations. In conducting any study, MSPB is also authorized to make such inquiries as may be necessary and, unless otherwise prohibited by law, to have access to personnel records or information from OPM or other agencies as needed.

(b) What Is an OPM Significant Action?

The law also does not specify criteria for MSPB to use in determining which actions of OPM are significant for purposes of preparing its report. In exercising its discretion as to which actions of OPM to study, MSPB considers the following:

(1) Any OPM policy or program which might conflict with the statutory merit principles or contribute to the commission of a prohibited personnel practice;

(2) The extent to which other major decisions made or actions taken by OPM are in accord with and promote the merit principles; and

(3) OPM's overall impact on personnel management within the merit systems of the Federal civil service.

(c) Public Comment on MSPB's 1993 Research Agenda

MSPB invites any interested person or organization to comment on any systemic personnel management issues or practices the examination of which would assist MSPB in determining adherence to the merit principles and the absence of prohibited personnel practices. Individual personnel actions are outside the scope of the research agenda.

Interested persons or organizations are further invited to comment on which recent actions of OPM were "significant" for the civil service, and whether those actions were consistent with merit system principles and free from prohibited personnel practices.

(d) Format for Comments

The comments should contain for each topic a short statement of the issue being raised, a brief explanation as to why it should be studied, and a description of the impact of the issue on the Federal service.

(e) Acknowledgement of Comments

Due to the nature of this notice (i.e., a request for suggestions), no acknowledgement or response will be provided to those who submit comments.

(f) Confidentiality

MSPB will protect the identity of persons submitting comments and the confidentiality of such comments to the extent permitted by law.

Dated: December 15, 1992.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 92–30842 Filed 12–18–92; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Challenge/Advancement Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Design Arts Advancement Section) to the National Council on the Arts will meet on January 8, 1993 from 9 a.m.–5 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: December 15, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–30906 Filed 12–18–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Atmospheric Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: Wednesday, January 6, 1993; 8 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed

Contact Person: Dr. Richard S. Greenfield, Section Head, Lower Atmosphere Research, Division of Atmospheric Sciences, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7645.

Purpose of Meeting: To provide advice and recommendations concerning proposal submitted to NSF for financial support.

Agenda: To review and evaluate the NCAR Research Aircraft Fleet Restructuring proposal as part of the selection process for an award.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 14, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–30902 Filed 12–18–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

In the Biweekly Notice beginning on page 53781 in the issue of Thursday, November 12, 1992, make the following correction:

On page 53792, in the third column, under the Southern California Edison Company, et. al. heading, "*Date of issuance:* April 2, 1992" should read "*Date of issuance:* October 23, 1992."

For the Nuclear Regulatory Commission.

James W. Clifford,

Director, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–30858 Filed 12–18–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424–OLA–3 50–425–OLA–3

Georgia Power Co., et al.; (Vogtle Electric Generating Plant, Units 1 and 2)

Atomic Safety and Licensing Board

Before Administrative Judges:
Peter B. Bloch, Chair
Dr. James H. Carpenter
Thomas D. Murphy

Re: License Amendment (Transfer to Southern Nuclear)

ASLBP No. 96–671–01–OLA–3

December 14, 1992.

(Limited Appearances; Prehearing Conference)

Pursuant to 10 CFR 2.715 and 2.752 [1], we will hold a public limited appearance session from 7 pm to up to 10 pm (as required), January 11, 1993, and a public prehearing conference from 9 am until 11 am on January 12, at the Law Enforcement Center, room 240, 401 Walton Way, Augusta, Georgia 30911.

Limited appearances may be written or oral. People wishing to speak at the limited appearance session may obtain priority by mailing a letter on or before January 5 to: Licensing Board (Georgia Power), U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written appearances may be mailed to the same address or submitted at the Limited Appearance session. Limited Appearances will be listened to or read carefully but are not part of the decisional record and may not, therefore, form a basis for the opinion of the Board. Each appearance will be limited to from five to ten minutes, depending on the number of speakers; the time limit will be announced at the beginning of the session.

For the Atomic Safety and Licensing Board, Bethesda, Maryland.

Peter B. Bloch,

Chair.

[FR Doc. 92–30859 Filed 12–18–92; 8:45 am]

BILLING CODE 7590–01–M

[1] See also § 2.751a.

[Docket No. 50–445]

TU Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–87 issued to TU Electric Company (the licensee) for operation of the Comanche Peak Steam Electric Station, Unit 1 (CPSES) located in Somervell County, Texas.

The proposed amendment would revise the Unit 1 Technical Specifications to include revised heatup and cooldown curves for the reactor coolant system, revised limits for the power-operated relief valve (PORV) setpoints, and the addition of a specification for feedwater isolation valve pressure/temperature limits. These changes are required to support the licensing of Comanche Peak Steam Electric Station Unit 2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The following changes affect the pressure/temperature limits which define the acceptable regions of operation:

- The 50 psi decrease in heatup/cooldown curve;
- The 39 psi decrease in a portion of the PORV setpoint curve;
- The addition of the 20°F/hour heatup curve; and

• The 1°F increase in the criticality limit.

As such, these changes do not affect the probability that overpressure events (the events of concern) would occur. These changes only affect the conditions from which events could be initiated.

The consequences of overpressure events are limited by assuring that the applicable stress limits for the Reactor Coolant System pressure boundary (e.g., ASME Boiler and pressure Vessel Code, section III, appendix G and 10 CFR part 50, appendix G) are not exceeded. Because the revised acceptable regions of operation still assure that these limits are not exceeded, these changes have no impact on the consequences of an overpressure event.

The change of terminology to use the adjusted reference temperature (ART) is editorial only.

The changes in the ART values are updates based on the results from the reactor material irradiation surveillance program. The ART values on these figures are informational only and do not directly affect plant operation or performance.

The margin for instrumentation error described in the text above the heatup and cooldown curves is changed to reflect the additional 50 psi of measurement uncertainty which is incorporated into the curves. The margin for instrumentation error as noted on these figures is informational only and does not directly affect plant operation or performance.

In summary, these changes are either editorial or descriptive or only affect the limits which define the acceptable range for operation. As such, these changes do not change the probability or consequences of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are either editorial or descriptive or only affect the limits which define the acceptable regions for operation. No changes are proposed which could result in a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is determined by the failure point for a particular system, structure, or component and the acceptance criteria which are established to ensure that the failure point is not reached during the events of concern. For these specifications, the failure points of concern are the points at which brittle fracture failures could occur in the Reactor Coolant System (RCS) pressure boundary. The acceptance criteria are, in part, the pressure/temperature limits provided by Figures 3.4–2 and 3.4–3 and the PORV setpoint limits in Figure 3.4–4.

For the Reactor Coolant System, the severity of the stresses which can exist are determined by the actual temperature, pressure, and heatup/cooldown rates which are allowed. The method of determining the pressure/temperature limit curves for various heatup and cooldown rates is based on approved calculational methodologies which establish an acceptable margin between the actual stresses and the failure point of the materials. An allowance for measurement uncertainties of the instruments is then combined with the actual stresses to produce the heatup/cooldown limit curves.

The different heatup/cooldown rate curves are calculated by the same methodologies and the same instrument uncertainties apply. Therefore, the curve for each heatup/cooldown rate provides essentially the same margin of safety. For example, for each heatup curve, the maximum stress, and therefore the minimum margin of safety, exists at the heatup rate designed for that curve. Consequently, the margin of safety for a 60°F/hour heatup while operating on the 60°F/hour curve is essentially the same as the margin of safety for a 100°F/hour heatup while operating on the 100°F/hour curve.

The new 20°F/hour heatup curve was determined using the same calculational methodologies as the new 60°F/hour and 100°F/hour heatup curves. The same instrument uncertainties were applied to develop all of these curves and therefore each provides essentially the same margin of safety.

The instrumentation used to assure operation within the allowed range for these curves has not been changed and therefore the uncertainty of the instrumentation has not changed. However, a previously unrecognized 50 psi uncertainty has been incorporated into all of the heatup/cooldown and PORV setpoint curves. Because the actual instrument uncertainty is unchanged but the existing curves are being lowered to incorporate an allowance for the additional 50 psi uncertainty, the maximum stress conditions allowed to exist have been reduced and the margin of safety has been increased.

As with the heatup and cooldown curves discussed above, the maximum allowable PROV setpoints specified in Figure 3.4–4 are selected to assure that pressure/temperature limits are not exceeded. The transients of concern are analyzed including factors such as equipment time delays, instrumentation uncertainties, valve opening times, etc., to ensure that the pressure overshoot does not exceed the limits established by appendix G of section III of the ASME Boiler and Pressure Vessel code. The PORV setpoint curve is determined by combining the results of the analysis with the limits determined by the ASME code. The account for the additional 50 psi uncertainty, the analysis was revised. When the analyses was revised, some overly conservative assumptions were replaced with acceptable but less conservative assumptions. As a result, the PORV setpoint curve has decreased when below 237°F by 39 psi instead of 50 psi. The other 11 psi was absorbed by the revised assumptions.

No changes were made to the installed plant hardware or instrumentation. Thus, an actual plant transient will progress in the same manner following this change in PORV setpoint curve except for the initial conditions. In other words, the actual pressure overshoot for the limiting transient is not expected to change. The pressure limits per the ASME code remains essentially unchanged. Therefore, the 39 psi reduction in the setpoint limit (i.e., initial conditions) increases the margin of safety.

The change in the terminology to use "ART" and the descriptive change in the pressure margin have no direct effect on either plant operations or on the actual margin.

The changes in the ART values are the results of an update of existing calculations and are based on the actual neutron fluence obtained from the reactor vessel material irradiation surveillance program. The revised ART values are used in the calculations of the revised heatup and cooldown curves. The effects of the changes to the ART values are reflected in the heatup and cooldown curves, but do not directly affect any margins or plant operations. The fact that the art values decreased indicates that the reactor vessel is more resistant to brittle fracture; however, the change is so small as to be inconsequential.

The revised criticality limits reflected on Figure 3.4–2 specify pressure/temperature limits for critical core operation in order to provide additional margin during actual power production, in accordance with 10 CFR part 50, appendix G. The curves are applicable for RCS temperatures below approximately 350°F. However, because criticality below an average RCS temperature of 551°F is prohibited by Technical Specification 3.1.1.4, the

changes to these limits are descriptive, and have no effect on margin or plant operation.

In summary, the proposed changes are either editorial or descriptive in nature with no effect on margin, or represent an increase in the actual margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:14 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 21, 1992, the license may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a currently copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/ Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged factors or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those factors or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene became parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where

petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20336, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 31, 1992, as supplemented by letters dated October 29, 1992, and December 14, 1992, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/ Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 16th day of December 1992.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Acting Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–30857 Filed 12–18–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Review of OPM Form 1417 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed information collection, Combined Federal Campaign Results Code Sheet, OPM Form 1417. This form is completed annually by the local Principal Combined Fund Organizations, and is used by the Office of Personnel Management to compute the campaign contributions.

Approximately 500 forms are completed annually, each requiring an estimated one hour to complete, for a total public burden of 500 hours. For copies of this proposal call C. Ronald Trueworthy, (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, OIRA, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dennis A. Matteotti, (202) 606–2564.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–30907 Filed 12–18–92; 8:45 am]

BILLING CODE 6325–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) this notice announces that the information collection requests abstracted below have been forwarded to the Office of Management and Budget for review and are available for public review and comment. A copy of the information collection may be obtained from Mr. Chris Kent, Office of Associate Director for Volunteer Recruitment and Selection, United States Peace Corps, 1990 K Street, NW., Washington, DC 20526. Mr. Kent may be called at 202–606–3994. Comments on these forms should be addressed to Lin Liu, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Volunteer Application.

Need for and Use of the Information: Peace Corps needs this information in order to process applicants for Volunteer service. The information is used to determine qualifications and potential for placement of applicants.

Respondents: Individuals who apply for Peace Corps Volunteer service.

Burden on the Public:

a. Annual reporting burden: 15,000 hours
b. Annual recordkeeping burden: 0 hours
c. Estimated average burden per response: 1 hour
d. Frequency of response: on occasion
e. Estimated number of likely respondents: 15,000

Title: Peace Corps Reference Form.

Need for Use of the Information: The Peace Corps needs this information in order to evaluate applicants for Volunteer service. The information is used to select and place applicant/ nominees to Peace Corps Volunteer programs.

Respondents: Individuals listed as references by applicants for Volunteer service.

Burden on the Public:

a. Annual reporting burden: 18,000 hours
b. Annual recordkeeping burden: 0 hours
c. Estimated average burden per response: 30 minutes
d. Frequency of response: on occasion
e. Estimated number of likely respondents: 36,000 hours

Elwin Guild,

Director of Planning and Policy Analysis.

[FR Doc. 92–30844 Filed 12–18–92; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31597; File No. SR–NASD–92–37]

December 14, 1992.

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Transaction Reporting Procedures

The National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NASD–92–37) on August 31, 1992, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934[1] and Rule 19b–4 thereunder. The purpose of the proposed rule change is

[1] 15 U.S.C. 78s.

to amend the NASD rules governing real-time transaction reporting.[2]

The Commission provided notice of the proposed rule change in Securities Exchange Act Release No. 31241 (September 25, 1992), 57 FR 45646. The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends the NASD rules governing real-time transaction reporting in NASDAQ/NMS securities, NASDAQ Small-Cap securities, and exchange-listed securities.[3] The proposed rule change extends real-time transaction reporting,[4] deletes the *de minimis* thresholds for non-registered reporting members for real-time transaction reporting, and makes technical amendments to the transaction reporting rules.

The proposed rule change will extend real-time transaction reporting for NASDAQ/NMS and NASDAQ Small-Cap securities executed after normal market hours.[5] For NASDAQ/NMS and NASDAQ Small-Cap securities, the proposed rule change will require that members transmit last sale reports of transactions executed between the hours of 4 p.m. and 5:15 p.m. Eastern Time[6] through the Automated Confirmation Transaction System ("ACT") within 90 seconds after execution.[7] The proposed rule change also will require the use of the indicator, ".T," for trades reported after 4 p.m. to designate such trades as after hours.[8] For transactions in NASDAQ/NMS and NASDAQ Small-Cap securities executed outside the hours of 9:30 a.m. and 5:15 p.m., NASD members will be required to submit last sale reports weekly on Form T.

The proposed rule change deletes the *de minimis* thresholds for real-time trade reporting in NASDAQ/NMS, NASDAQ Small-Cap, and exchange-listed securities. Currently, NASD rules do not subject the non-registered market maker to real-time reporting in a specific security if the member's trading activity in that security satisfies the *de minimis* exemption. NASD rules exempt non-registered market makers with trading activity that, during the trading day, does not exceed 1,000 shares and $25,000, and has not exceeded these limits on five or more of the previous ten trading days. The proposed rule change will require non-registered market makers to submit, within ninety seconds of execution, last sale reports of transactions in NASDAQ/NMS and NASDAQ Small-Cap, and exchange-listed securities notwithstanding the number's transaction activity.

The proposed rule change also makes technical amendments to the NASD's transaction reporting rules. The proposed rule change amends Schedule D to delete references to the Transaction Reporting System which has been replaced by the NASD's ACT system.[9] The proposed rule change also amends the transaction reporting rules to replace certain terms with terms more commonly used. For example, the proposal adds the term "Market" Operations Department to replace "NASDAQ" Operations Department.[10]

Under Schedule G, the proposed rule change replaces the term "designated" reporting member with the term "registered" reporting member.[11] The proposal also clarifies that an NASD member is a "registered" reporting market maker in only those eligible securities for which it has registered as a CQS market maker and that the member shall cease being a registered reporting market maker when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of the NASD. The proposal also amends Schedule G to clarify that ACT is the service that, among other things, accommodates reporting and dissemination of last sale reports in eligible securities.

II. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act, and in particular, with sections 15A(b)(6) and 11A(a) (1) (C) of the Act. Section 15A(b) (6) of the Act requires that the NASD's rules be designed to prevent fradulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system. Section 11A(a)(1)(C) sets forth the objective of ensuring the availability to brokers, dealers and investors of information with respect to quotations for and tansactions in securities.[12]

Real-time transaction reporting is essential to the efficient and fair operation of the securities markets and to the establishment of an NMS. It is critical for those who trade to have access to accurate, up-to-the second information as to the prices at which transactions in particular securities are taking place.[13] Benefits of real-time transaction reporting include efficient pricing of securities, effective monitoring of the quality of executions, and enhanced liquidity of the market for securities.[14] Real-time transaction

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[2] On November 2, 1992, the NASD amended the proposal to require real-time trade reporting of NASDAQ/National Market System ("NASDAQ/NMS") and NASDAQ Small-Cap securities for trades executed between 9:00 a.m. and 9:30 a.m. Letter from Richard G. Ketchum, Executive Vice President, NASD, to Elizabeth H. MacGregor, Branch Chief, Division of Market Regulation ("Division"), Commission, dated November 2, 1992.

The NASD subsequently withdrew the amendment and will file it as a separate proposed rule change pursuant to section 19(b)(2) of the Act. Letter from Robert E. Aber, Vice President and Deputy General Council, NASD, to Anthony R. Bosch, Attorney, Division, Commission, dated November 30, 1992.

[3] The proposed rule change amends parts XII and XIII of Schedule D, and amends Schedule G to the NASD By-Laws. See Securities Exchange Act Release No. 31241 (September 25, 1992), 57 FR 45646.

[4] NASD rules that require "real-time transaction reporting, required NASD members to report trades within 90 seconds of execution. NASD Rules, Schedule D, Part XII, Section 2, and Part XIII, section 2; and Schedule G, Section 2.

[5] The NASD rules defines normal market hours as 9:30 a.m. through 4 p.m. See NASD Rules, Schedule D, Part VI, Section 6, and Part VII, Section 3.

The proposal does not extend real-time transaction reporting for exchange-listed securities. NASD rules currently require members to submit real-time last sale reports of exchange-listed securities executed between 9:30 a.m. and 5:15 p.m. (the Consolidated Tape currently operates between 9:30 a.m. and 5:15 p.m.). For transactions in exchange-listed securities executed outside the hours of 9:30 a.m. and 5:15 p.m., NASD members are required to submit last sale reports weekly on Form T. NASD rules, Schedule G. Section 2.

[6] All times referred to are Eastern Time, unless otherwise noted.

[7] Currently, NASD rules requires real-time trade reporting in NASDAQ/NMS and NASDAQ Small-Cap securities through 5 p.m.

[8] Currently, transactions in NASDAQ Small-Cap securities reported between 4:10 p.m. and 5:00 p.m. are designated by the .T indicator. The .T indicator currently is not used for NASDAQ/NMS securities.

[9] ACT is the NASD's post-trade comparison system that among other things, accommodates reporting and dissemination of last sale reports in NASDAQ/NMS, NASDAQ Small-Cap, and exchange-listed securities. The instant rule change will not affect the member's rights and responsibilities under ACT.

[10] Among other things, NASD members report weekly on Form T to the Market Operations Department last sale reports executed after 5:15 p.m.

[11] A "registered reporting member" is an NASD member that is registered as a CQS market maker in a particular eligible security pursuant to NASD Rules, Schedule D, Part VII.

[12] The proposed rule change amends Schedule D, Part XII, which the Commission approved as a National Market System ("NMS") plan pursuant to section 11A of the Act and Rule 11Aa3-2 thereunder.

[13] See Senate Comm. on Banking, Housing, and Urb. Affairs, Report to Accompany S. 249; Securites Acts Amendments of 1975, S. rep. No. 75, 94th Cong., 1st Sess. 7-9 [Comm. Print 1975], reprinted in [1975] U.S. Code Cong. & Ad. News 179, 187.

[14] See Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396.

reporting also captures an audit trail that provides regulatory information for market surveillance and for investigating questionable conduct, such as insider trading and manipulative activity.

The proposed rule change will extend real-time reporting of NASDAQ/NMS and NASDAQ Small-Cap securities to 5:15 p.m. and will make the NASD's real-time trade reporting rules for NASDAQ/NMS, NASDAQ Small-Cap, and exchange-listed securities more consistent. The proposed rule change also will increase real-time trade reporting of non-registered market markers and thus, will reduce the usage of Form T as a reporting vehicle for transactions in NASDAQ/NMS, NASDAQ Small-Cap, and exhange-listed securities effected between 9:30 a.m. and 5:15 p.m.

Thus, the proposed rule change will enhance real-time trade reporting of NASDAQ/NMS, NASDAQ Small-Cap, and exchange-listed securities. Real-time trade reports submitted to the NASD pursuant to the proposed rule change will be disseminated through the NASD's NASDAQ system and securities information vendors for NASDAQ/NMS and NASDAQ Small-Cap securities, and through the Consolidated Tape and securities information vendors for exchange-listed securities. This will provide broker-dealers and investors information necessary to make informed judgments about the securities offered for purchase or sale.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change in consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, sections 15A(b)(6) and 11A(a)(1)(C) of the Act.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change described above be, and thereby is, proposed.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR. Doc. 92–30828 Filed 12–18–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31596; File No. SR–NYSE–92–14]

December 14, 1992.

Self-Regulatory Organizations; the New York Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Amendments to the Specialist Performance Evaluation Questionnaire

I. Introduction

On June 18, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Specialist Performance Evaluation Questionnaire. Notice of the proposal appeared in the **Federal Register** on August 20, 1992.[3] No comments were received. This order approves the proposed rule change.

II. Description of the Proposal

The Specialist Performance Evaluation Questionnaire ("SPEQ") is an important tool in the Exchange's continuing effort to improve specialist performance and the stock allocation process.[4] Exemplary specialist performance may be rewarded with an improved chance to receive a stock allocation. The Exchange reviews the SPEQ process periodically in order to ensure that the instrument maintains its vitality and effectiveness.[5] The proposed amendments, described below, are the result of the Exchange's latest study of the SPEQ process.[6]

The amendments will restructure the SPEQ so that each of the five functions considered—dealer, service, competitiveness, communications, and administrative functions—will be weighted equally. Currently, the first three functions are weighted at 30% each and the last two functions are weighted at 5% each. The NYSE believes that an equal distribution of weight would be more appropriate to the importance of the functions and would lead to more objective evaluations of specialists as the weight given to a particular question or function would not be considered by brokers when evaluating a unit's performance.

The NYSE will use two versions of the questionnaire during each quarter's evaluation process and continue the practice of dispersing positively and negatively worded questions throughout the instrument.

In order to avoid any conflict of interest, the NYSE will preclude brokers from rating specialist units which maintain Exchange Rule 325(e) financial responsibility guarantees for them or have lease agreements with them.

The SPEQ will also be amended to provide space for voluntary signing by rating brokers. Specialists would not be informed which brokers signed the questionnaires. The signing would indicate a broker's willingness to discuss an evaluation with a Floor Governor. As a result of this proposal, the NYSE will use Floor Governors as liaisons to facilities communication between specialists and the brokers who rate them. In addition, under the proposal, specialists would be provided with an alphabetized list of brokers that rated their unit.[7]

The questionnaire would also be amended to permit a rating broker to indicate the percentage of the business he conducts (*e.g.*, retail or institutional) in the unit's stock. This information would not be used in connection with the calculation of a unit's score, but would accompany the broker's comments to assist specialists in their performance improvement efforts.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] Securities Exchange Act Release No. 31032 (August 13, 1992), 57 FR 37859.

[4] The SPEQ is a quarterly survey on specialist performance completed by eligible floor brokers. The SPEQ consists of 21 questions and requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.

NYSE Rule 103A contains standards for evaluating specialist performance and authorizes an Exchange committee to reallocate stocks assigned to a specialist unit whose performance is found to be substandard as determined by the Rule. Under Rule 103A, a specialist's performance is measured by a combination of SPEQ scores and objective standards of performance. Specialist performance, as measured by the SPEQ or the other objective criteria, is also he primary factor in allocating new stocks to specialists. See NYSE Allocation Policy and Procedures.

[5] The Exchange last revised the SPEQ in February, 1990 Securities Exchange Act Release No. 27675 (February 5, 1990), 55 FR 4922 (File No. SR–NYSE–89–32), among other things, by adopting a new scoring methodology for the SPEQ that provides specialists with their overall rank among all specialist units as well as a range of ranks, which shows their comparability to other units. Rule 103A, which sets forth performance standards for specialists, was last amended in February, 1991, when the new scoring methodology for the SPEQ was incorporated into the Rule so that specialists who are regularly among the lowest ranked units on a relative basis would be subject to performance improvement actions. Securities Exchange Act Release No. 28923 (February 27, 1991), 56 FR 9993 (File No. SR–NYSE–90–44).

[6] This proposed rule change does not amend the rating scale used on the SPEQ or the performance standards applicable to the SPEQ specified in Rule 103A.

[7] The NYSE indicated that typically thirty to thirty-five brokers rate each specialist unit.

In order to ensure that each specialist unit's pool of selected evaluators is roughly comparable and that the most qualified brokers, in terms of activity (*i.e.*, trades, share volume and days), are assigned to evaluate each unit, the NYSE will implement a guideline which would enable eligible brokers from order-generating firms to rate the same unit(s) in consecutive quarters and eligible two-dollar brokers to rate the same unit(s) in three out of every four quarters. The NYSE will require that at least 40% of every unit's assigned evaluators must be brokers from order-generating firms and, if necessary to meet the 40% minimum, assign such brokers as many as four units to evaluate each quarter.

Finally, the SPEQ would be amended to provide a space for comments on specialist performance by the head of a member organization's upstairs trading desk. These individual's input may be useful as a communications tool and as n additional perspective on specialist performance.

III. Discussion

After careful consideration of the applicable statutory provisions, the Commission believes the NYSE's proposal to amend the SPEQ is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission therefore is approving the proposed rule change.

The Commission agrees that the SPEQ is an important tool in evaluating the quality of, and improving, specialists' performance, and aids the Exchange in its decisions to allocate stocks to specialists. The Commission appreciates the Exchange's efforts continually to refine the questionnaire and to change it periodically so that floor brokers who respond to the questionnaire four times a year do not become so accustomed to the document that their responses are stale.

The Commission believes that some of the changes approved today are designed to ensure that floor traders will give appropriate attention to answering the questions on the questionnaire. For example, the decision to issue two versions of the questionnaire, one with questions positively worded and the other with questions negatively worded, will force floor brokers to treat each questionnaire as unique. In addition, the questionnaire now gives floor brokers the choice to sign the questionnaires, indicating the broker's willingness to discuss the evaluation with a Floor Governor. Providing a space for comments by the member's upstairs trading desk also is designed to elicit additional views on a specialist's performance.[8]

The Commission supports those amendments that are designed to avoid a conflict of interest by precluding brokers from rating specialist units which maintain Exchange Rule 325(e) financial responsibility guarantees for them or who have lease agreements with them. Avoiding even the appearance of a conflict of interest can strengthen the specialist system and the Exchange and instill confidence in the Exchange's SPEQ process.

The Commission believes that other changes to the SPEQ are reasonably designed to enhance the value of the questionnaire. For example, there is a new guideline that would enable eligible brokers from order-generating firms to rate the same specialist unit(s) in consecutive quarters, and a requirement that at least 40% of every unit's assigned evaluators must be brokers from order-generating firms. This would ensure input by brokers having the most relevant history with the specialist unit being evaluated. Moreover, based on recent experience, the Exchange has determined to give equal weight to the five functions evaluated in the questionnaire. The Commission believes it is reasonable for the NYSE to determine that the equal weighting of each category will more accurately reflect a specialist's performance.[9]

For the foregoing reasons, the Commission is approving the proposed rule change. The Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act[10] because it promotes just and equitable principles of trade, and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change can result in enhancing the Exchange's specialist evaluation process and that the proposal is likely to encourage improved specialist performance consistent with the protection of investors and the public interest. In this regard, the changes should help ensure the integrity of the specialist evaluation process, in addition to providing an opportunity for brokers in firms to provide more information on the evaluations which may be useful for both specialists and the Exchange in evaluating their performance. Further, the Commission finds that the proposal is consistent with section 11(b)[11] of the Act and Rule 11b–1[12] thereunder, which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and protect the mechanism of a national market system.

IV. Conclusion

For the foregoing reasons, the Commission has determined to approve the proposed rule change.

It is therefore ordered, Pursuant to section 19(b)(1) of the Act, that the proposed rule change (NYSE–92–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30827 Filed 12–18–92; 8:45 am]

BILLING CODE 8010–01–M

[8] As noted above, specialists will also, under the proposal being approved herein, be provided with an alphabetized list of floor brokers that rated their unit, but would not be provided with the actual ratings from each broker. Because usually thirty to thirty-five brokers rate each unit, we do not believe providing this limited information to specialists should unduly inhibit brokers from honestly evaluating specialist.

[9] In Release No. 34–27675 (note 5, *supra*), the Commission first approved the current differential weighing scale for the five functions. Based on several review periods experience, the Exchange now believes that two of the functions were underweighted, and has determined to revert to equal weights. Telephone conversation between Brian McNamara, Managing Director, NYSE, and Sandra Sciole, Special Counsel, SEC, on October 13, 1992.

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] 15 U.S.C. 78k(b) (1988).

[12] 17 CFR 240.11b–1 (1992).

[13] 17 CFR 200.30–3(a)(12) (1989).

[Investment Company Act Release No. 19153; 811–5048]

National Global Allocation Fund; Application for Deregistration

December 14, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: National Global Allocation Fund.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on November 6, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 11, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, D.C. 20549. Applicant, Two Pickwick Plaza, Greenwich, Connecticut 06830.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end non-diversified management investment company registered under the Act. Until October 12, 1992, when it filed a dissolution of trust with the Massachusetts Secretary of State, applicant was a Massachusetts business trust.

2. On March 5, 1987, applicant filed a registration statement on form N-1A under the Securities Act of 1933 and section 8(b) of the Act to register an unlimited number of shares. The registration statement became effective on June 15, 1987, and the initial public offering commenced immediately thereafter.

3. On March 13, 1992 and June 12, 1992, applicant's board of trustees authorized an agreement and plan of reorganization (the "Plan") whereby applicant would transfer all of its assets and liabilities to National Worldwide Opportunities Fund ("Worldwide"), a registered investment company (File No. 811–945) organized under the laws of the Commonwealth of Massachusetts. On that same date, applicant's board of trustees also approved the proxy materials pursuant to which shareholder approval of the Plan was solicited.

4. Applicant had 3,542,154.491 shares outstanding, with each share having a net asset value of $11.69 as of July 31, 1992. On or about August 24, 1992, applicant distributed to its shareholders proxy materials relating to the proposed reorganization. At a special meeting held on September 25, 1992, a majority of applicant's shareholders approved the Plan.

5. Pursuant to the Plan and in compliance with rule 17a-8, at the end of the business day on September 25, 1992, applicant transferred to Worldwide all of its existing assets and liabilities in exchange for Worldwide shares, both full and fractional, having an aggregate net asset value equal to applicant's aggregate net asset value. Applicant then distributed pro rata the Worldwide shares to applicant's record shareholders in complete liquidation and termination of applicant.

6. Applicant and Worldwide respectively assumed the expenses applicable to the Plan. Such expenses consisted of legal fees, registration fees, transfer taxes (if any), the fees of banks and the transfer agent, the cost of preparing, printing, copying, and mailing proxy solicitation materials, and the cost of the proxy solicitor. No brokerage commissions were paid in connection with the Plan.

7. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[Release No. 35–25707]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 14, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. all interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 7, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Hope Gas, Inc.

[70–8091]

Hope Gas, Inc. ("Hope Gas"), 600 Union National Center West, Clarksburg, West Virginia 26302, a wholly owned gas public-utility subsidiary company of Consolidated Natural Gas Company, a registered holding company, has filed an application under section 9(c)(3) of the Act.

Hope Gas proposes to acquire before December 31, 1993, a limited partner interest in Vandalia Capital Limited Partnership (the "Partnership"), a West Virginia limited partnership, by acquiring 10 Class B Units of the Partnership for an aggregate purchase price of $1 million. The Partnership, which will have a ten-year term, will be qualified as a West Virginia Capital Company under the West Virginia Capital Company Act, part of a program to encourage private venture capital investments in West Virginia businesses by providing certain state tax credits equal to 50% of their venture capital investment. The Partnership also intends to form and seek federal approval for a Small Business Investment Corporation as the primary investment vehicle for the Partnership. The Partnership may also participate jointly in pooled investments with other capital companies.

Hope Gas will be the sole owner of the Class B Units, holding 25% of the equity of the Partnership. The Class B Units entitle Hope Gas to certain tax credits, which it estimates will result in net tax savings of $650,000.

The general partner of the Partnership will be responsible for the management and investment decisions of the Partnership. Hope Gas' voting power will be limited to dissolving the Partnership and amending certain Partnership provisions; Hope Gas, however, will have no power to remove the general partner, or elect a new general partner.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–30826 Filed 12–18–92; 8:45 am]

BILLING CODE 3010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Terra Industries, Inc., Common Shares, No Par Value) File No. 1–8520

December 15, 1992.

Terra Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, it decided to withdraw the above-specified security from listing on the PSE because the Company believes that its trading volume of the Shares on the Exchange is limited. The Company's major stockholders see no advantage in retaining such listing. Also, according to the Company, it has adequate liquidity in the Shares as a result of the listing of the Shares on the New York Stock Exchange, Inc. ("NYSE") and Toronto Stock Exchange, Inc. ("TSE"). The Company believes that continued listing of the Shares on the Exchange would involve unnecessary expense.

Any interested person may, on or before January 7, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–30824 Filed 12–18–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Acting Secretary of State

[Public Notice 1744]

Cross Border Transportation Facilities

AGENCY: Department of State.

ACTION: Notice of application.

SUMMARY: Notice is hereby given that the Department of State has received as application for a Presidential permit to build and operate a railway tunnel connecting the United States and Canada between Sarina, Ontario and Port Huron, Michigan.

DATES: Interested parties are invited to submit, in duplicate, comments relative to the proposal on or before January 21, 1993.

ADDRESSES: For mailing public comments: Office of Maritime and Land Transport (EB/TRA/MA), room 5828, Department of State, Washington, DC 20520–5816.

FOR FURTHER INFORMATION CONTACT: Stephen Miller, Office of Maritime and Land Transport, Department of State, Washington, DC 20520–5820 (202) 647–6961.

SUPPLEMENTARY INFORMATION: The Department of State has received an application from the Canadian National Railway Company ("CN"), a Canadian corporation, and three of its wholly owned U.S. subsidiaries, Grand Trunk Corporation, St. Clair Tunnel Company and the St. Clair Tunnel Construction Company, for a Presidential permit to construct and operate a railway tunnel which will connect the United States and Canada under the St. Clair River between Sarnia, Ontario and Port Huron, Michigan.

The new tunnel would be built approximately 80 feet to the north of an existing tunnel currently operated by CN. It would be used to transport railcars containing freight and passengers. The existing tunnel is not large enough to accommodate modern railroad cars such as bi- and tri-level cars used extensively by the automotive industry and double-stacked intermodal container cars. The applicants propose to take the existing tunnel out of service and fill it in once the new tunnel is in service.

Dated: December 14, 1992.

Arnold Kanter,

Acting Secretary of State.

[FR Doc. 92–30843 Filed 12–18–92; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended December 11, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of the date of filing.

Docket Number: 48529
Date filed: December 7, 1992
Parties: Members of the International Air Transport Association
Subject: Telex TC31 Mail Vote 605 Add-on Amounts (in USA)
Proposed Effective Date: April 1, 1993

Docket Number: 48534
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: PSC/Reso/067 dated November 23, 1992, Expedited Resolution—Issue 2, 14 IATA PSC–13th Joint IATA/ATA PSC
Proposed Effective Date: Expedited January 1, 1993

Docket Number: 48535
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: PSC/Reso/066 dated November 23, 1992, Finally Adopted Resos r–1 to r–63, 14th PSC–13th Joint IATA/ATA PSC
Proposed Effective Date: June 1, 1993

Docket Number: 48536
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1341 dated December 1, 1992, Europe-Africa Expedited Resos, r–1–021 r–2–003b
Proposed Effective Date: Expedited January 1, 1993

Docket Number: 48538
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/C 0895 dated May 1, 1991, North Atlantic Areawide Cargo Resos r–1, to r–2, TC12 Reso/C 0897 dated May 1, 1991, North Atlantic-Africa Cargo Resos r–3 to r–5, TC12 Reso/C 0899 dated May 1, 1991, North Atlantic-Middle East Cargo Resos r–6, TC12 Reso/C 0901 dated May 8, 1991, Europe to US/UST Cargo Resos r–11
Proposed Effective Date: Upon Government Approval

Docket Number: 48539
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0470 dated May 8, 1991, Composite Reso 004z,

(Summary attached.)
Proposed Effective Date: Upon Government Approval
Docket Number: 48540
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0462 dated February 11, 1991, Composite Reso 025b as it pertains to Area 12 and Area 123
Proposed Effective Date: Upon Government Approval
Docket Number: 48541
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: TC123 Reso/C 0026 dated April 22, 1991, TC1-South Asian subcontinent via Atlantic, TC123 Rates 0013 dated May 27, 1991—Tables r–l–554d r–2–590 r–3–015aa
Proposed Effective Date: Upon Government Approval
Docket Number: 48542
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0521 dated September 15, 1992 Resolution 003rr
Proposed Effective Date: October 1, 1992
Docket Number: 48543
Date filed: December 9, 1992
Parties: Members of the International Air Transport Association
Subject: Comp Reso/C 0529 dated November 3, 1992, Composite Reso 002oo as it pertains to U.S. markets
Proposed Effective Date: December 1, 1992
Docket Number: 48544
Date filed: December 9, 1992
Parties: Members of the International Air transport Association
Subject: Comp Reso/C 0528 dated October 30, 1992, North Atlantic US–Europe cargo resos, TC12 Rates 0481 dated October 30, 1992—Tables, TC12 Rates 0482 dated October 30, 1992—Tables
Proposed Effective Date: December 1, 1992

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92–30894 Filed 12–18–92; 8:45 am]
BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 11, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48547
Date filed: December 11, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1992
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal and amendment of its certificate of public convenience and necessity for Route 543 to authorize foreign air transportation of persons, property and mail between any point in the United States and any point in Venezuela.

Docket Number: 48548
Date filed: December 11, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1992
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 542 (Puerto Rico-Caracas).

Docket Number: 48550
Date filed: December 11, 1992
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1993
Description: Application of Air Ukraine, pursuant to section 402 of the Act and subpart Q of the Regulations requests a foreign air carrier permit authorizing it to engage in foreign scheduled air transportation of persons, property and mail as follows: From a point or points in Ukraine to New York, New York, Chicago, Illinois, and Washington, DC, United States of America.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92–30891 Filed 12–18–92; 8:45 am]
BILING CODE 4910–62–M

Federal Aviation Administration

Control of Parts Shipped Prior to Type Certificate Issuance

AGENCY: Federal Aviation Administration, DOT.
ACTION: Notice of availability.

SUMMARY: This notice announces the availability of an Advisory Circular (AC) concerning the Control of Parts Shipped Prior to Type Certificate Issuance. This Advisory Circular provides information and guidance to the general public and the aviation industry concerning compliance with the Federal Aviation Regulation concerning certification procedures for products and parts.

ADDRESSES: Copies of AC 21–32 can be obtained from the following: Federal Aviation Administration, Department of Transportation, Utilization and Storage Section, M443.2, 400 Seventh Street SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Aircraft Manufacturing Division, Production Certification Branch, AIR–220, room 333, 800 Independence Avenue SW., Washington, DC 20591, phone: (202) 267–8361.

SUPPLEMENTARY INFORMATION: This AC provides information and guidance concerning the control of parts proposed to be shipped by manufacturers with an approved production inspection system (APIS) or production certificate (PC) (production approval holders) in advance of type certification of a new aircraft, aircraft engine, or propeller (product).

Issued in Washington, DC on October 16, 1992.

Janice W. Elrod,
Acting Assistant Manager, Aircraft Manufacturing Division.
[FR Doc. 92–30889 Filed 12–18–92; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–92–37]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified

requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 11, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 14, 1992.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26440.
Petitioner: Falcon Jet Corporation.
Sections of the FAR Affected: 14 CFR 47.65 and 47.69(b).
Description of Relief Sought: To allow the extension of the termination date of Exemption No. 5315, which expires on May 30, 1993, and which permits Falcon Jet Corporation to obtain a Dealer's Aircraft Registration Certificate without meeting the United States citizenship requirements, and to conduct limited flights outside of the United States under the certificate, subject to conditions and limitations.

Docket No.: 110CE
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 23.53(c)(1).
Description of Relief Sought: To allow Beech Aircraft Corporation to use the ground minimum control speed to determine the takeoff decision speed for its Beech Models B300 and B300C.

Docket No.: 110CE.
Petitioner: Advanced Aerodynamics and Structures, Inc.
Sections of the FAR Affected: 14 CFR 23.903(e)(2).
Description of Relief Sought: To allow the Advanced Aerodynamics and Structures, Inc.'s Jetcruzer 450 to operate with a PT6A–27 Turboprop engine without complying with the stop rotation requirement of the rule.

Dispositions of Petitions

Docket No.: 25636.
Petitioner: International Aero Engines AG.
Sections of the Far Affected. 14 CFR 21.325(b)(1) and (3).
Description of Relief Sought/ Disposition: To allow export airworthiness approvals to be issued for Class I products (engines) assembled and tested in the United Kingdom, and for Class II and III products manufactured in the International Aero Engines consortium countries of Italy, West Germany, Japan, and the United Kingdom.
Grant, December 7, 1992, Exemption No. 4991B

Docket No.: 25743.
Petitioner: Mr. Ted Rutherford.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To allow Mr. Rutherford to serve as a pilot on an airplane engaged in operations under this part after his 60th birthday.
Denial, November 30, 1992, Exemption No. 5564

Docket No.: 26548.
Petitioner Mr. Joseph S. Davis, Jr.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To allow Mr. Joseph S. Davis, Jr. to serve as a pilot on an airplane engaged in part 121 operations after his 60th birthday.
Denial, December 3, 1992, Exemption No. 5571

Docket No: 26593.
Petitioner: Mr. Robert M. Orr.
Sections of the FAR Affected: 14 CFR 121.383 (c).
Description of Relief Sought/ Disposition: To allow Mr. Orr to serve as a pilot after his 60th birthday on an airplane engaged in operations under this part during the en route cruise portion of flight, pursuant to the duties and limitations of 14 CFR 121.543(b) of the FAR, entitled "Flight Crewmember at Controls".
Denial, November 30, 1992, Exemption No. 5563

Docket No: 26686.
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(2).
Description of Relief Sought/ Disposition: To allow Evergreen International Airlines, Inc., to transport persons who are not company employees in its airplanes without complying with certain passenger-carrying airplane requirements, operation requirements, and certain passenger requirements.
Denial, November 30, 1992, Exemption No. 5565

Docket No: 27015.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.311(b) and (c).
Description of Relief Sought/ Disposition: To allow member airlines of the Air Transport Association of America and other similarly situated part 121 operators to extend the effective date by which they must comply with the portions of this section that address the use of child restraint systems on aircraft.
Denial, November 30, 1992, Exemption No. 5566

[FR Doc. 92–30879 Filed 12–18–92; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–92–38]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitioners.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 11, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 14, 1992.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27039.
Petitioner: William A. McCullough.
Sections of the FAR Affected: 14 CFR 61.103(a).
Description of Relief Sought: To allow Mr. McCullough an exemption from the regulation that requires a person to be at least 17 years of age to be eligible for a private pilot certificate, and to allow him to accrue Pilot-in-Command flight time in cross-country flights in a powered aircraft with other than a student pilot certificate in order to apply for an instrument rating. Mr. McCullough is a 16-year-old student pilot who currently meets the knowledge, proficiency, and experience requirements to apply for a private pilot certificate.

[FR Doc. 92–30882 Filed 12–18–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Subcommittee; Systems Design and Analysis Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Systems Design and Analysis Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the Systems Design and Analysis Harmonization Working Group of the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport airplanes, engines and propellers in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33 and 35).

The FAA announced at the Joint Aviation Authorities (JAA)–Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2–5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Transport Airplane and Engine Subcommittee those projects related to JAR/FAR 25, 33 and 35 harmonization which were then in the process of being coordinated between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Transport Airplane and Engine Subcommittee, consequently, established the Systems Design and Analysis Harmonization Working Group.

Specifically, the Working Group's task is the following: The Systems Design and Analysis Harmonization Working Group is charged with making recommendations to the Transport Airplane and Engine Subcommittee concerning the FAA disposition of the following subject recently coordinated between the JAA and the FAA:

Equipment, Systems and Installations: Develop guidance material concerning the evaluation and control of certification maintenance requirements created to satisfy the requirements of FAR 25.1309 for newly certificated transport category airplanes (AC 25.1309–1A; ref. FAR 25.1309).

Reports: A. Recommend time line(s) for completion of each task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on each task to the Subcommittee before proceeding with the work stated under items C, below.

C. Draft a change to Advisory Circular 25.1309–1A providing appropriate guidance material.

D. Give a status report on each task at each meeting of the Subcommittee.

The Systems Design and Analysis Harmonization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Subcommittee and Working Group Chairs and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the full Committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory

Committee Act. Meetings of the Systems Design and Analysis Harmonization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on December 11, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–30884 Filed 12–18–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Aircraft Certification Procedures Subcommittee: International Certification Procedures Harmonization Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of the International Certification Procedures Working Group.

SUMMARY: Notice is given of the establishment of the International Certification Procedures Working Group by the Aircraft Certification Procedures Subcommittee. This notice informs the public of the activities of the Aircraft Certification Procedures Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Aircraft Certification Procedures Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–9562.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Aircraft Certification Procedures Subcommittee was established subsequently meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the aircraft certification procedures in part 21 of the Federal Aviation Regulations (57 FR 39267; August 28, 1992).

The FAA announced at the Joint Aviation Authorities (JAA)–Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Ontario, Canada, (June 2-5, 1992) that it would consolidate within the Aviation Rulemaking Advisory Committee structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR). Coincident with that announcement, the FAA assigned to the Aircraft Certification Procedures Subcommittee those rulemaking projects related to international certification procedures for type certification of new and derivative aircraft which were then in the process of being coordinated between the JAA and the FAA. The Harmonization process included the intention to present the results of JAA/FAA coordination to the public in the form of either a Notice of Proposed Rulemaking or an advisory circular—an objective comparable to and compatible with that assigned to the Aviation Rulemaking Advisory Committee. The Aircraft Certification Procedures Subcommittee, consequently, established the International Certification Procedures Working Group.

Specifically, the Working Group's tasks are the following: The International Certification Procedures Working Group is charged with making recommendations to the Aircraft Certification Procedures Subcommittee concerning the FAA disposition of the following rulemaking subject recently coordinated between the JAA and the FAA:

The International Certification Procedures Working Group is charged with making recommendations to the Aircraft Certification Procedures Subcommittee concerning the FAA disposition of rulemaking subjects recently coordinated between the JAA and the FAA concerning the type certification procedures for changes to aeronautical products. Specifically, considering factors such as safety benefits, resources, and service experience, the working group should address the following issues:

1. Can later revisions of the airworthiness standards be used for the certification basis of changes to aeronautical products?

2. Can later revisions of the airworthiness standards be incorporated into the existing fleet?

3. Can new revisions of the airworthiness standards be incorporated into aeronautical products in production and in operation, as well as in new designs?

Reports: A. Recommend time line(s) for completion of the task, including rationale, for Subcommittee consideration at the meeting of the subcommittee held following publication of this notice.

B. Give a detailed conceptual presentation on the task to the Subcommittee before proceeding with the work stated under item C through E, below.

C. Draft a Notice of Proposed Rulemaking for the tasks proposing new or revised requirements, a supporting economic analysis, and other required analysis.

D. Draft an advisory circular to provide guidance complementing the rules proposed in the Notice of Proposed Rulemaking, and any other collateral documents the working group determines to be needed.

E. Recommend a training syllabus for FAA employees charged with administering the rule, including videotapes and other training support.

F. Give a status report on the task at each meeting of the Subcommittee.

The International Certification Procedures Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Aircraft Certification Procedures Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should *write* the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the International Certification Procedures Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on December 11, 1992.

William J. Sullivan,

Executive Director, Aircraft Certification Procedures Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-30887 Filed 12-18-92; 8:45 am]

BILLING CODE 4910-13-M

Aircraft Certification Procedures Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aircraft Certification Procedures Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 14, 1993, at 9 a.m. Arrange for oral presentations by December 29, 1992.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR-1, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aircraft Certification Procedures Subcommittee to be held on January 14, 1993, at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005. The agenda will include:

- Organization of the subcommittee.
- Report from the International Certification Procedures Harmonization Working Group.
- Report from other working groups established before the meeting.
- A discussion of future meeting dates, activities and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by December 29, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 11, 1992.

William J. Sullivan,

Executive Director, Aircraft Certification Procedures Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-30885 Filed 12-18-92; 8:45 am]

BILLING CODE 4910-3-M

Rotorcraft Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Rotorcraft Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 12, 1993, at 9 a.m. Arrange for oral presentations by December 29, 1992.

ADDRESSES: The meeting will be held at the Holiday Inn, 1600 South Country Club Drive, Mesa, AZ 85210.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Rotorcraft Subcommittee to be held on January 12, 1993, at the Holiday Inn, 1600 South Country Club Drive, Mesa, AZ 85210. The agenda will include:

- Report from the External Load Working Group.
- Report from the JAR/FAR 27 and 29 Harmonization Working Group.
- Report from the Occupant Restraint Working Group.
- Review of planned FAA rulemaking and advisory circular projects.
- Discussion of subcommittee procedures.
- A discussion of activities and future plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by December 29, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 16 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC, on December 11, 1992.

William J. Sullivan,

Executive Director, Rotorcraft Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-30886 Filed 12-8-92; 8:45 am]

BILLING CODE 4910-3-M

Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 28, 1993, at 9 a.m. Arrange for oral presentations by January 14, 1993.

ADDRESSES: The meeting will be held in the Boardroom, Air Transport Association of America, suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20046-1707.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II). notice is hereby given of a meeting of the Emergency Evacuation Subcommittee to be held on January 28, 1993, in the Boardroom, Air Transport Association of America, suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20004-1707. The agenda for this meeting will include:

- A status report by the Performance Standards Working Group.
- A report by the Special Task Group recommending approaches to take in developing performance standards.
- A discussion of future activities and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 14, 1993, to present oral statement at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed

under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on December 11, 1992.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-30883 Filed 12-18-92; 8:45 am]

BILLING CODE 4910-13-M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In November 1992, there were 11 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Westchester, White Plains, New York.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $27,883,000.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: June 1, 2022.

Class of Air Carriers Not Required to Collect PFC'S: Air charter operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Construct peripheral safety road,
Construct parallel taxiways and taxiway system,
Heated snow removal equipment and materials storage building,
Construct general aviation infrastructure,
Land acquisition.

Brief Description of Project Disapproved: Construct new aircraft and firefighting (ARFF) training facility.

Determination: The new ARFF training facility project has been reviewed under AIP criteria (paragraph 301b and 500 of FAA Order 5100.38A), which, respectively, permit projects to be reviewed on a case-by-case basis and preclude AIP eligiblity for any development which exceeds standards or requirements established by the Secretary of Transportation. Such standards and requirements as are applicable to ARFF training facilities were established in guidance distributed by the FAA on June 4, 1991. Pursuant to that guidance, the FAA has implemented criteria under which only regional ARFF training facilities are eligible under the AIP. Inasmuch as two regional ARFF training facilities are located within 50 miles of Westchester County Airport (HPN), the proposed facility at HPN would exceed standards and is not eligible for either AIP or PFC funding. In addition, the FAA has determined that this project does not enhance safety, security, or capacity, mitigate noise impacts or furnish opportunities for enhanced competition between or among carriers. Therefore, this project is not PFC eligible.

Decision Date: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (718) 917-1882.

Public Agency: Yakima Air Terminal Board, Yakima, Washington.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $416,256.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: April 1, 1995.

Class of Air Carriers Not Required to Collect PFC'S:

Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire, except air taxi/commercial operators operating public or private charters in aircraft with a seating capacity of 60 or more.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Master plan update,
Rehabilitate runway 9-27 high intensity runway light system,
Update airport electrical system,
Purchase snow removal equipment, snow blower,
Taxiway guidance sign modifications,
Air cargo apron, design phase,
Construct air cargo ramp,
Security improvements, automatic gates, fence, and signs,
Airport access road, Circle Drive renovation,
Purchase of passenger access lift for mobility-impaired passengers,
Install elevator for handicapped access, terminal building, second floor,
Heating, ventilation, and air conditioning, terminal building, lobby and concourses,
Renovation of baggage claim area,
Purchase of a runway vacuum sweeper,
Consultant services for environmental assessment, project formulation, scope of work, and cost estimates for runway 9-27 rehabilitation.

Brief Description of Projects Disapproved: Snow removal equipment, ramp plow/loader.

Determination: Section 158.33(a)(1) requires the public agency to begin implementation of a project no later than 2 years after receiving approval to use PFC revenue on that project. Therefore, all projects approved in this application must begin implementation by no later than November 1994. The schedule submitted with the application shows an implementation date of October 1995 for this project.

Radio Equipment.

Determination: This type of equipment is included as a nonallowable item in Appendix 2 of FAA Order 5100.38A, AIP Handbook. The project does not meet the criteria included in section 158.15(b); therefore, it is not PFC eligible.

Decision Date: November 10, 1992.

FOR FURTHER INFORMATION CONTACT: Paul F. Johnson, Seattle Airports District Office, (206) 227-2655.

Public Agency: Guam Airport Authority, Tamuning, Guam.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $5,632,000.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: June 1, 1994.

Class of Air Carriers not Required to Collect PFC's: Part 135 air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Conduct environmental assessment,
Runway improvements, 1992,
Environmental assessment for Navy land acquisition,
Apron 1 through 9 rehabilitation,
Apron 11 through 13 construction reimbursement (sponsor share).

Decision Date: November 10, 1992.

FOR FURTHER INFORMATION CONTACT: Henry A. Sumida, Honolulu Airports District Office, (808) 541-1230.

Public Agency: City of Tallahassee, Tallahassee, Florida.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $8,617,154.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: December 1, 1998.

Class of Air Carriers not Required to Collect PFC's:

Part 135 air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Overlay runway 9/27 and taxiway, upgrade taxiway lighting,
Construct perimeter security fence and security access system,
Update airport master plan and noise study,
Construct covered walkway and handicap ramp, other terminal improvements for Americans with Disabilities Act compliance,
Overlay south apron,
Overlay runway 18/36 and taxiways, associated projects,
Construct service road west of runway 9/27 and construct perimeter road east and south of runway 9/27,
Overlay old terminal ramp for general aviation,
Purchase quick response aircraft rescue and firefighting (ARFF) vehicle,
Purchase a 3,000 gallon ARFF vehicle,
Construct taxiway for T-hanger access.

Brief Description of Project Approved in Part for Collection: Construct 10,000 square foot ARFF building.

Determination: The amount of approved PFC revenue reflects a decrease from the requested amount of $950,000. This reduction limits the approved PFC amount to a three bay facility rather than the four bay facility requested. The reduction is based on the current and projected ARFF index for the airport. As such, only a three bay facility is AIP eligible and, accordingly, the PFC approved amount is limited to this level.

Brief Description of Projects Disapproved for Collection: Acquire property (6.85 acres).

Determination: The public agency did not provide information to show that the project meets the project eligibility criteria of section 158.15(a). As such, the FAA is unable to determine that the project would preserve or enhance safety, security, or capacity at Tallahassee Regional Airport (TLH); reduce noise or mitigate noise impacts; or furnish opportunities for enhanced competition between or among air carriers.

Relocate airport surveillance radar (ASR) site.

Determination: The relocation of air traffic facilities, including ASR facilities, are eligible under the definition of airport development contained in the Airport and Airway Improvement Act of 1982 (503(a)(2)), provided that the relocation is necessitated by AIP-eligible development. However, the public agency did not demonstrate that the relocation is necessitated by AIP-eligible development, therefore, this project is not PFC eligible under section 158.15(b).

Construct new ARFF training facility.

Determination: The FAA has determined that this project does not enhance safety, security, or capacity, mitigate noise impacts, or furnish opportunities for enhanced competition between or among carriers. The FAA is currently implementing a policy of funding only regional ARFF training facilities. TLH is located within reasonable proximity to a previously designated regional ARFF facility at Ocala, Florida.

Decision Date: November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Carlos Maeda, Orlando Airports District Office, (407) 648–6583.

Public Agency: Grand Forks Regional Airport Authority, Grand Forks, North Dakota.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,016,509.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: February 1, 1997.

Class of Air Carriers not Required to Collect PFC'S: Part 135 operators providing unscheduled passenger/charter services operating aircraft with a passenger capacity of less than 30 seats.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Terminal building expansion,
Reconstruction of runway 8–26 and taxiway B,
Rejuvenation of runway 35L–17R porous friction course,
Purchase of self-propelled broom,
T-hanger taxiway,
Construction of general aviation ramp for aircraft maintenance facility.

Brief Description of Projects Approved to Impose Only:

Reconstruct/widen taxiway A,
Snow plow replacement,
Expansion of general aviation ramp,
Expand air cargo ramp,
Construction of high-speed exists on runway 17L–35R and runway 8–26.

Decision Date: November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Irene Porter, Bismarck Airports District Office, (701) 250–4385.

Public Agency: County of Delta, Escanaba, Michigan.

Application Type: Impose PFC.

PFC Level: $3.00.

Total Approval Net PFC Revenue: $158.325.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: August 1, 1996.

Class of Air Carriers not Required to Collect PFC's: Air taxi and charter operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Project Approved to Impose Only:

Acquire land (26.5 acres) including relocation assistance,
Professional engineering services for rehabilitation, widening extension, and installation of porous friction course of runway 18/36 including medium intensity runway lights (MIRL), and new parallel taxiway including medium intensity lights (MITL),
Rehabilitate, widen, and extend runway 18/36, construct runway 18/36 porous friction, course, rehabilitate MIRL, construct north/south parallel taxiway and MITL.

Decision Date: November 17, 1992.

FOR FURTHER INFORMATION CONTACT: Dean Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: Telluride Regional Airport Authority, Telluride, Colorado.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $200,000.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: November 1, 1997.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Project Approved to Impose and Use: Construct terminal building.

Decision Date: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Dakota L. Chamberlain, Denver Airport District Office, (303) 286–5537.

Public Agency: City of Pensacola, Pensacola, Florida.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $4,715,000.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: April 1, 1996.

Class of Air Carriers not Required to Collect PFC's: Part 135 air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Project Approved to Impose and Use: Land acquisition.

Brief Description of Projects Approved to Impose Only:

Extend passenger terminal,
Provide a vegetation barrier,
Purchase navigation easements.

Brief Description of Project Approved in Part to Impose and Use: Construct a midfield service road.

Determination: A portion of this road, from the perimeter road to the ARFF facility, is AIP eligible and will preserve safety at Pensacola Regional Airport (PNS). The remainder of the road, from the ARFF facility to the air traffic control tower is not AIP eligible; therefore, that portion of the road is not PFC eligible and the approved amount has been reduced from the requested amount accordingly.

Brief Description of Project Disapproved: Conduct a master plan drainage study.

Determination: The state has asked the city of Pensacola to conduct a drainage study to obtain "conceptual permits"; however, the state has not been specific as to what is required. The city of Pensacola has not provided sufficient information in the application to permit an FAA determination that this project is AIP eligible as a stand-alone project.

Decision Date: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Carlos Maeda, Orlando Airports District Office, (407) 648–6583.

Public Agency: Humboldt County, Arcata, California.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $188,500.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: May 1, 1994.

Class of Air Carriers Not Required to Collect PFC's. None.

Brief Description of Projects Approved to Impose and Use:

Overlay and groove runway 14/32,
Rehabilitate aircraft rescue and firefighting vehicle, Runway, taxiway, and ramp area seal coat; reconstruct transient apron; construct tiedown apron and access area (including hangar demolition); replace wind sock; and replace perimeter fence.

Decision Date: November 24, 1992.

FOR FURTHER INFORMATION CONTACT: Joe Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: County of San Luis Obispo, San Luis Obispo, California.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $502,437.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: February 1, 1995.

Class of Air Carriers Not Required to Collect PFC's. Part 135 air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual employments.

Brief Description of Projects Approved to Impose and Use:

Acquire runway protection zone and approach protection land,
Extend perimeter fencing and gates; improve fire station apron; replace segmented circle; improve and replace rotating beacon,
Acquire approach protection land; update airport master plan; grade runway safety area; acquire wheelchair lift device,
Expand air carrier apron,
Expand air carrier terminal building—phase I (professional services).

Decision Date: November 24, 1992.

FOR FURTHER INFORMATION CONTACT: Joe Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Greater Orlando Aviation Authority, Orlando, Florida.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $167,574,527.

Earliest Permissible Charge Effective Date: February 1, 1993.

Duration of Authority to Impose: February 1, 1998.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved to Impose and Use:

Roadway to southern connector,
International passenger terminal,
Airside 1 expansion and rehabilitation,
West ramp rehabilitation,
Runway 18L/36R rehabilitation.

Brief Description of Project Approved in Part to Impose and Use: Environmental planning and approvals for the north crossfield taxiway.

Determination: The scope of this project includes preliminary design work which is beyond what is required for the environmental planning and is disapproved. The remainder of the project is AIP eligible and development which may be undertaken following completion of the environmental process would enhance capacity at MCO. The approved amount has been reduced from the requested amount to only those costs related to the approved portion of the project.

Decision Date: November 27, 1992.

FOR FURTHER INFORMATION CONTACT: Pablo Affant, Orlando Airport District Office, (407) 648–6583.

Issued in Washington, D.C. on December 14, 1992.

Donna P. Taylor,

Manager, Passenger Facility Charge Branch.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge, effective date	Estimated charge, expiration date[1]
ALABAMA					
Huntsville Intl-Carl T. Jones Field, Huntsville	03/06/1992	$3	$20,831,051	06/01/1992	11/01/2008
Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge, effective date	Estimated charge, expiration date [1]
ARIZONA					
Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
CALIFORNIA					
Metropolitan Oakland International, Oakland	06/26/1992	3	8,736,000	09/01/1992	09/01/1993
Palm Springs Regional, Palm Springs	06/25/1992	3	44,612,350	10/01/1992	06/01/2019
San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
COLORADO					
Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
FLORIDA					
Southwest Florida Regional, Fort Myers	08/31/1992	3	257,673,262	11/01/1992	06/01/2015
Sarasota-Bradenton, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
GEORGIA					
Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
IDAHO					
Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	
Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
ILLINOIS					
Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
ILLINOIS					
Capital, Springfield	03/27/1992	3	682,306	06/01/1992	05/01/1994
IOWA					
Dubuque Regional, Dubuque	10/06/1992	3	108,500	01/01/1993	05/01/1994
LOUISIANA					
Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
MARYLAND					
Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
MASSACHUSETTS					
Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
MICHIGAN					
Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
MICHIGAN					
Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
MINNESOTA					
Minneapolis-St Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
MISSISSIPPI					
Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
Hattiesburg-Laurel Regional, Laurel-Hattiesburg	04/15/1992	3	119,153	07/01/1992	01/01/1998
Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
MISSOURI					
Lambert-St Louis International, St Louis	09/30/1992	3	131,453,450	12/01/1992	12/01/1997
MONTANA					
Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge, effective date	Estimated charge, expiration date [1]
NEVADA					
McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
NEW HAMPSHIRE					
Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
NEW JERSEY					
Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
NEW YORK					
Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
John F Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
OHIO					
Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
Fort Columbus-International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
OKLAHOMA					
Lawton Municipal, Lawton	05/08/1992	2	334,078	08/01/1992	01/01/1996
Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
OREGON					
Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
PENNSYLVANIA					
Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
TENNESSEE					
Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
TEXAS					
Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
VIRGINIA					
Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
WASHINGTON					
Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
WEST VIRGINIA					
Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994

[1] The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 92–30890 Filed 12–18–92; 8:45 am]
BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with title 49, Code of Federal Regulations, §§ 211.9 and 211.41, (49 CFR) notice is hereby given that the Federal Railroad Administration (FRA) has received from Southeastern Pennsylvania Transportation Authority (SEPTA) a request for exemptions from or waivers of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

Southeastern Pennsylvania Transportation Authority

Waiver Petition, Docket Number LI–92–9

SEPTA is seeking a waiver of compliance from § 229.29(a) of the Railroad Locomotive Safety Standards, 49 CFR part 229. SEPTA is requesting that it be permitted to extend the clean, oil, test and stencil (COT&S) period from 736 days (24 months) to 1104 days

(36 months) on 304 electric multiple unit cars equipped with 26–R and PS–68 air brake equipments. This equipment utilizes the same control and relay valves as the 26–L locomotive system for which a waiver was granted in January 29, 1985.

SEPTA states that the air supply system on the subject cars is equipped with a desiccant dryer with a coalescer filter which will be maintained on an annual basis. This will ensure a clean, dry air supply to all valves. The railroad states the change will utilize manpower more efficiently, and conserve scarce resources while maintaining a safe operation.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–92–9) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before January 19, 1993, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on December 14, 1992.

Phil Oleksyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92–30804 Filed 12–18–92; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Docket No. 92–50; Notice 2

Autokraft Limited; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice grants the petition by Autokraft Limited of Weybridge, Surrey, England, for a temporary exemption from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*. The basis of the petition was that compliance would cause it substantial economic hardship.

Notice of receipt of the petition was published on October 1, 1992, and an opportunity afforded for comment (57 FR 45416).

Petitioner sought a two-year exemption for its A.C. Mark IV ("MkIV" herein) passenger car. The basis for the petition was that immediate compliance with the automatic restraint requirements of Standard No. 208 would cause the petitioner substantial economic hardship, within the meaning of 49 CFR 555.6(a). Petitioner's total motor vehicle production in the 12 months preceding the filing of the petition was 45 units. It projected sales of 50 vehicles per year.

The Autokraft A.C. MkIV, according to petitioner, "is the only Cobra-like vehicle which is produced from original Cobra tooling. The original A.C. Cobras, both 289 and 427 versions, manufactured by A.C. Cars in Thames Ditton, Surrey, England, are no longer in production." Further, "Because of public interest, the A.C. Cobra is reported to be the most duplicated vehicle of all time." In August 1991, the petitioner decided to introduce the MkIV into the American market. In the year preceding the filing of its petition, it expended approximately 1,200 man hours and 64,000 Pounds Sterling on the project. It examined both automatic belt systems and air bags in its review of Standard No. 208, and was unable to identify any automatic belt system that it could install in the MkIV that would allow it to conform to the automatic restraint requirements. It also examined available air bag systems because designing a proprietary system is cost and time prohibitive.

The modifications required to adapt an existing air bag system to the MkIV were estimated to total in cost $790,000. The components of this cost are modifications to the steering column ($50,000), modifications to the underhood packaging, etc. ($40,000), design and development of a knee bolster system and tooling, and dashboard modifications ($200,000), and all relevant testing costs ($500,000). In order not to duplicate its costs, the petitioner wished to develop a passenger-side air bag system at the same time, at an estimated additional cost of $300,000. These costs were said to be prohibitive without the sale of vehicles to fund the development program. The two-year period requested would provide time for Autokraft to develop and implement its fully-complying air bag systems, and to generate sufficient income to fund the project. In the interim, the MkIV will be equipped "with a four point belt system on the driver and passenger side of the vehicle." In substantiation of its hardship argument, petitioner submitted its balance sheets and income statements for the past three fiscal years, plus the first six months of 1992. It reported a net loss of 186,318 Pounds Sterling in the first half of 1992 (or $348,415 at a rate of $1.87 to 1 Pound), a net profit of 604,487 Pounds Sterling in 1991 (or $1,130,391 at the same rate), and a cumulative net profit as of June 30, 1992, of 1,073,752 Pounds Sterling (or $2,007,916).

According to the petitioner, a temporary exemption would be in the public interest because it would allow sale of a vehicle that is "the only true alternative" to the original Cobra vehicles, and result "in the establishment of dealer and service networks which would increase stateside employment and generate tax revenues." An exemption would be consistent with the objectives of the National Traffic and Motor Vehicle Safety Act "since they meet all FMVSS and NHTSA standards, except for the passive restraint portion of standard 208 and are equipped with a superior four point seat belt system which ensures the safety of the driver and passenger."

NHTSA observed that Standard No. 208, through its incorporation by reference of Standard No. 209, specifies requirements for two and three point non-automatic occupant restraint systems, but does not include the four point system that the petitioner installs in the MkIV. Thus, any exemption would be from Standard No. 208 in its entirety, not just paragraph S4.1.4. NHTSA invited the petitioner to comment on the extent to which its four point system and its installation may otherwise conform to the requirements of Standard No. 208 and Standard No. 209.

No comments were received on the petition.

In granting a petition of this nature, the Administrator must find that the petitioner has made a good faith effort to conform to the standard, that immediate compliance with it would cause the petitioner substantial economic hardship, and that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act ("the Act").

The petition indicates that, in the year preceding its filing, the petitioner spent 1,200 man hours and $119,680 on researching the means to comply with

the automatic restraint requirements, and reaching an understanding of the costs involved in achieving compliance. Therefore, NHTSA find that Autokraft has made the requisite good faith effort.

Reasonably, Autokraft seeks to achieve air bag protection for both driver and passenger at the same time. The total costs estimated for compliance are $1,090,000. This is almost equal to the company's net income for 1991 of $1,130,391.

Although the company had a reasonably comfortable cumulative net profit as of June 30, 1992, Autokraft suffered a net loss for the first six months of this year. This could indicate continuing losses without the availability of the American market. To implement an automatic restraint development program on a crash basis might affect the company's reserves while a phased-in program over the next two years would allow more flexibility in budgetary planning and allocations. NHTSA therefore finds that immediate compliance would cause Autokraft substantial economic hardship.

The sales and service facilities, and tax revenues, that might result form an exemption would appear to be small, but real nonetheless. Further, in enacting the act, Congress intended that the public be afforded a continuing wide choice of vehicles. Finally, the petitioner has informed NHTSA that the Mk IV vehicles to be sold in the U.S. will be equipped with a three-point restraint system for both driver and passenger that complies with the requirements of Standards Nos. 208 and 209. Therefore, NHTSA finds that a temporary exemption would be in the public interest and consistent with the objectives of the Act.

In consideration of the foregoing, Autokraft Ltd. is hereby granted NHTSA Temporary Exemption No. 92–6, expiring January 1, 1995, from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.*

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50).

Issued on December 14, 1992.

Marion C. Blakey,

Administrator.

[FR Doc. 92–30803 Filed 12–18–92; 8:45 am]

BILLING CODE 4910–59–M

Docket No. 92–55; Notice 2

Isis Imports Ltd.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Standard No. 208

This notice grants the petition by Isis Imports Ltd. of San Francisco, California, for a temporary exemption from the automatic restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.* The basis of the petition was that compliance would cause substantial economic hardship, and that the petitioner has, in good faith, attempted to meet the requirements of the standard.

Notice of receipt of the petition was published on October 13, 1992, and an opportunity afforded for comment (57 FR 46896).

Petitioner was previously granted a 3-year exemption from paragraphs S4.1.2.1 and S4.1.2.2 of Standard No. 208, which expired October 1, 1992 (54 FR 43647).

The make and type of passenger car for which exemption was requested is the Morgan convertible. The British manufacturer of the Morgan has not offered its vehicle for sale in the United States since the early days of the Federal motor vehicle safety standards. In recent years, however, Isis has bought a small number of disassembled vehicles from Morgan, imported the parts, assembled the vehicles, and sold them in the United States. They differ from their British counterparts, not only in equipment items and modifications necessary for compliance with the Federal motor vehicle safety standards, but also in their engines, which are propane fueled. As the assembler of the vehicle, Isis certifies conformance to all applicable Federal motor vehicle safety, bumper, and theft prevention standards. The vehicle assembled by Isis in the U.S. is deemed sufficiently different from the one produced by Morgan in England that Isis may be regarded as its manufacturer, not its converter, even though the brand names are the same.

Isis assembled 11 Morgans for sale in the U.S. in the 12-month period preceding the filing of its petition. It asked for a further 3-year exemption from the automatic restraint requirements of Standard No. 208, during which time it would continue to provide protection through its current three-point lap-shoulder belt system. However, before the end of that time, it hopes to be able to offer an air bag system.

In arguing that compliance would cause it substantial economic hardship and that it had in good faith attempted to meet the requirements of the standard, Isis related its efforts to conform while the previous exemption was in effect. Initially, it had continued to pursue research on automatic belt systems, obtaining seat belt hardware and motor drive assemblies, and created a mock-up. However, both petitioner and Morgan's engineering staff concluded that this system was not feasible because, over time, the seat belt track would deform, rendering it unusable. Further, modelling of the path of belt travel over the legs of the driver and passenger indicated an unacceptable degree of contract between the belt and occupant legs. It also noted simultaneously a growing level of consumer resistance to the use of automatic belt systems. Consequently, in the Spring of 1991, it once again began to seek out air bag suppliers. The petition recounts in considerable detail the unsuccessful efforts of Isis to obtain air bag systems from Jaguar, Rover, Rolls-Royce and Lotus. The proposals that it received from Lotus and Breed to develop a vehicle-specific air bag system were prohibitive in cost.

However, according to Isis, two possible sources are awaiting development. The petitioner hopes to obtain eventual access to a system that Range Rover is developing for its vehicles. It has heard from the British Department of Transport that some retrofit components will be coming on the market over the next 2 years. Until these developments materialize, it will be unable to offer an air bag system, and will require an exemption.

The petitioner's net income in 1991 was $10,698. For the 4-year period 1988–91, it had a cumulative net loss of $4,414. The company states that it will have to cease business if its petition is denied. Sales of spare parts and service would be inadequate to fund development of an automatic restraint system without new car sales.

Petitioner argued that an exemption would be in the public interest and consistent with the objectives of The National Traffic and Motor Vehicle Safety Act because it would allow it to continue to support existing owners of Morgan cars (it has been the major supplier of Morgans in the U.S. since 1975, and supplies parts for older cars). An exemption would also allow it to contribute toward the diversity of vehicles for sale in the U.S. The small number of vehicles likely to be produced during the time that the exemption is in effect will not materially affect safety. Finally, the petitioner enclosed photographs showing the effect on a Morgan of a collision at an estimated closing speed of 90 mph, after which the Morgan's driver, restrained by the 3-point belt system, walked away from the accident with only a cracked rib caused by the seat belt crushing a ball point pen in his shirt pocket.

No comments were received on the petition.

It is apparent from the Isis petition that the slender volume of vehicles it imports and sells afford it only a marginal existence under the best of circumstances, and have over the past four years resulted in a slight cumulative net loss. Its petition indicates that, in the three years since its original exemption was granted, it has explored avenues of conformance with the automatic restraint requirements. Isis has decided that an airbag system is most feasible for the design of its car, and that an automatic belt system will not be practicable for it. Thus it is manifest that to require immediate compliance with the automatic restraint requirements would cause it substantial economic hardship, and that it has, in good faith, attempted to comply with the standard.

NHTSA is also able to find that an exemption is in the public interest. The use of a propane-fueled power source is consistent with the national effort to promote alternate fuels, even if the volume is not significant.

An exemption is also consistent with the objectives of the Vehicle Safety Act. If the present rate of importation is maintained, less than three dozen vehicles will be manufactured under the exemption. Further, they will be equipped with a restraint system that complied with Standard No. 208 before September 1, 1989.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that compliance would cause it substantial economic hardship, and that it has, in good faith, attempted to comply with Standard No. 208. It is further found that an exemption would be in the public interest and consistent with the objectives of the Vehicle Safety Act. Accordingly, Isis Imports is granted NHTSA Temporary Exemption 92–7, expiring November 1, 1995, from sections S4.1.2.1 and S4.1.2.2 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.*

Authority: 15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.

Issued on December 14, 1992.

Marion C. Blakey,

Administrator.

[FR Doc. 92–30802 Filed 12–18–92; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 16, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OBM Number: 1512–0192.
Form Number: ATF REC 5110/02 and ATF F 5110.11.
Type of Review: Extension.
Title: Distilled Spirits Plants Warehousing Records and Reports
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides date to analyze trends in audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 224
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours
Frequency of Response: Monthly
Estimated Total Reporting/ Recordkeeping Burden: 5,376 hours
OMB Number: 1512–0205
Form Number: ATF REC 5110/01 and ATF F 5110.40
Type of Review: Extension
Title: Distilled Spirits Records (ATF REC 5110/01) and Month Report of Production Operations (ATF F 5110.40)
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 145
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: Monthly
Estimated Total Reporting Burden: 3,480 hours
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–30868 Filed 12–18–92; 8:45 am]

BILLING CODE 4810–31–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences; Notice Regarding Review of Thailand's Eligibility Under the GSP

AGENCY: Office of the United States Trade Representative.

ACTION: Notice regarding review of Thailand's eligibility under the Generalized System of Preferences.

SUMMARY: The purpose of this notice is to announce the continuation of the review of the worker rights practices of Thailand for the purpose of determining Thailand's eligibility under the Generalized System of Preferences (GSP) until the conclusion of the 1992 GSP Annual Review.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: During the 1991 Annual Review of the GSP program, a petition regarding the beneficiary status of Thailand based on its practices in the area of internationally recognized worker rights practices in the area of internationally recognized worker rights was accepted for review. 56 FR 42080 (August 26, 1991). On July 8, 1992, the Trade Policy Staff Committee (TPSC) announced that the review of Thai worker rights was being continued until December 15, 1992. 57 FR 30286 (July 8, 1992). One of the reasons for this extension was to provide a newly-elected Thai government with an opportunity to address the issues of particular concern to the TPSC, *i.e.* Thailand's practices regarding state enterprise workers and child labor.

Because the TPSC continues to have concerns about the worker rights

situation in key areas cited in the 1991 petition, *e.g.*, restrictions on the right of association for state enterprise workers, it was unable to recommend that Thailand is "taking steps" to afford internationally recognized worker rights as required by the GSP statute. However, the TPSC noted that the new government of Thailand has initiated actions to address these key issues. To allow time to determine what the outcome of these actions might be, the TPSC has decided to extend the review until the conclusion of the 1992 GSP Annual Review, *i.e.*, on or about April 1, 1993.

The GSP Subcommittee of the TPSC will publish a more detailed explanation of the current status of this review shortly.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 92-30860 Filed 12-18-92; 8:45 am]

BILLING CODE 3190-01-M

Implementation of the Accelerated Tariff Elimination Provision of the United States—Canada Free-Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of and request for comments concerning additional articles under consideration for negotiations with the Canadian Government for accelerated tariff elimination.

SUMMARY: Section 201(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to consultation and layover requirements of section 103 of that act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States and Canada under FTA Article 401(5). This notice is intended to inform the public of additional articles that may be the subject of negotiations between the United States and Canada for accelerated tariff elimination.

DATES: Public comments are due by December 31, 1992.

ADDITIONAL INFORMATION: Further information on this subject may be found in the Federal Register notice of September 4, 1992, Volume 57, Number 173, at page 40720 through 40727, which listed articles that may be the subject of the third round of negotiations between the United States and Canada for accelerated tariff elimination. Inquiries regarding aspects of this notice or relating to the implementation of accelerated tariff elimination under the FTA should be directed to Mr. P. Claude Burcky, Office of North American Affairs, Office of the United States Trade Representative, Room 502, 600 17th Street, NW, Washington, DC 20506, telephone (202) 395-3412.

Additional Articles That May Be Considered in Negotiations

In addition to the articles listed in the notice of September 4, 1992, as amended by the notice of October 23, 1992, (F.R. Vol. 57, No. 206, 48407), articles in the subheadings of the Harmonized Tariff Schedule of the United States listed below may again be subject to negotiations with Canada for reciprocal accelerated duty elimination. All of the articles listed below were considered during a previous round of negotiations with Canada, at which time the President received advice from the United States International Trade Commission regarding the probable economic effect of accelerated elimination of United States duties on industries producing like or directly competitive articles and on consumers. Advice also was received from the appropriate private sector advisory committees.

5804.21.00
5806.20.00
5806.31.00
5806.32
5808.10
5808.90.00
6002.10
6002.20
6002.30
6002.43.00
6002.92.00
6002.93.00
6302.22
6302.53.00
6302.60.00
6307.60
9999.00.15 (Sec. 466 of the Tariff Act of 1930)

A description of the articles provided for in the tariff subheadings can be obtained by consulting the "Harmonized Tariff Schedule of the United States (1992)", U.S. International Trade Commission Publication 2449.

Request for Comments

Comments supporting or opposing accelerated U.S. or Canadian duty elimination on articles provided for in the tariff subheadings listed above will be accepted until December 31, 1992, if submitted in accordance with 15 CFR part 2003 and the requirements set forth in the notice of September 4, 1992, referred to above.

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

[FR Doc. 92-30832 Filed 12-18-92; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 245
Monday, December 21, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 8, 1993.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31023 Filed 12–17–92; 3:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 15, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31024 Filed 12–17–92; 3:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 22, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31025 Filed 12–17–92; 3:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 29, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31026 Filed 12–17–92; 3:17 pm]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 21, 1992.

A closed meeting will be held on Tuesday, December 22, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 22, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceeding of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane at (202) 272–2400.

Dated: December 16, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–30992 Filed 12–17–92; 3:16 pm]

BILLING CODE 8010–01–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Editorial Note: This notice was originally published in the issue of Wednesday, December 16, 1992 (57 FR 59857). Due to printing errors it is being republished.

TIME AND DATE: Full Board 9:00 a.m., February 1, 1993.

PLACE: Uniformed Services University of the Health Sciences, room A1005, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552(e)(3)).

MATTERS TO BE CONSIDERED:

9:00 a.m. Meeting—Board of Regents.

(1) Approval of Minutes—November 2, 1992; (2) Faculty Matters; (3) Departmental Reports; (4) Financial Report; (5) Report—President, USUHS; (6) Comments—Members, Board of Regents; (7) Comments—Chairman, Board of Regents; (8) Reports of Subcommittees on Planning and Oversight; New Business.

CONTACT PERSON FOR MORE INFORMATION: David S. Trump, M.D., Executive Secretary of the Board of Regents, 301/295–3886.

Dated: December 14, 1992.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–30656 Filed 12–14–92; 3:08 pm]

BILLING CODE 3810–01–M

Corrections

Federal Register
Vol. 57, No. 245
Monday, December 21, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-041-N]
RIN 0938-AF95

Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rates Beginning January 1, 1993

Correction

In notice document 92-29145 beginning on page 56919 in the issue of Tuesday, December 1, 1992, make the following correction: On page 56923, in the table, under the heading "This projection", in the 3rd entry under 1993, "7.0" should read "7.1".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31492; File No. SR-MBS-92-04]

Self-Regulatory Organizations; MBS Clearing Corp.; Relating to the Limitation or Elimination of a Director's Liability in Certain Instances

Correction

In notice document 92-29033 beginning on page 56939 in the issue of Tuesday, December 1, 1992, in the heading, the Release No. should read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31285; File No. SR-NYSE-92-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amendments to Rule 421 (Periodic Reports)

Correction

In notice document 92-24611 beginning on page 46611 in the issue of Friday, October 9, 1992, make the following correction: On page 46611, in the first column, in the heading, the date was omitted. It should have read "October 5, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8451]

RIN 1545-AR03

Employee Business Expenses-Reporting and Withholding on Employee Business Expense Reimbursements and Allowances

Correction

In rule document 92-29700 beginning on page 57668, in the issue of Monday, December 7, 1992, make the following corrections:

§ 1.62-1 [Corrected]

1. On page 57668, in the third column, in § 1.62-1(c), in the first line, "*Deduction*" should read "*Deductions*".

§ 1.162-25 [Corrected]

2. On page 57669, in the first column, in § 1.162-25(b), in the fourth line from the end of the paragraph, "cent" should read "cents".

BILLING CODE 1505-01-D

federal register

Monday
December 21, 1992

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1 et al.
Federal Acquisition Regulations;
Miscellaneous Amendments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–16]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and final rules with request for comment.

SUMMARY: This document introduces the documents set forth below which comprise Federal Acquisition Circular (FAC) 90–16. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing FAC 90–16 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item	Subject	FAR case	DAR case	Analyst
I	Contractor Establishment Code	91–81	91–72	Scott.
II	Technical Changes to FAR Part 4, Administrative Matters	91–89	90–38	McGuire.
III	Publicizing Subcontract Opportunities	91–90	91–13	Scott.
IV	Metrics	92–611	90–301	O'Neill.
V	Contractor versus Government Performance, FAR Subpart 7.3 and Part 52	91–26	90–414	O'Neill.
VI	Change in Government Specified Source for Strategic and Critical Materials from Excess GSA Inventories.	91–76	91–049	Klein.
VII	List of Parties Excluded from Procurement Programs	91–65	91–77	Loeb.
VIII	Use of Small Purchase Procedures for Personal Services	91–80	91–24	O'Neill.
IX	OMB Circular A–133, Audits of Institutions of Higher Learning and Other Non-Profit Institutions	91–38	91–11	Olson.
X	Clarify Increased Cost or Pricing Data Threshold (Interim)	91–96	91–309	Olson.
XI	Nonmanufacturer Rule (Interim)	91–50	90–335	O'Neill.
XII	Bundling of Requirements	91–49	90–334	Scott.
XIII	Part 22 Threshold, Compensation Plans for Professional Employees	90–68	89–410	O'Neill.
XIV	Determination and Finding of Nonavailability	92–3		Loeb.
XV	Part 25, Thresholds	91–64	89–412	Loeb.
XVI	Severance Pay, Foreign Nationals	90–30	89–302	Olson.
XVII	GAO Bid Protest Regulations	91–86	91–6	O'Neill.
XVIII	Use of Indicia Mail	91–88	91–23	Klein.
XIX	Thresholds, Part 45	90–12	89–426	Klein.
XX	Government Property	90–41	90–454	Klein.
XXI	Inventory Schedules	91–74	90–503	Klein.
XXII	Threshold Change to FAR 51.106(b)	91–55	90–461	Klein.
XXIII	Standard Forms 254 and 255, Architect-Engineer Questionnaire	91–69	91–45	O'Neill.
XXIV	Technical Amendments.			

DATES: For effective dates, see separate documents which follow. Please cite FAC 90–16 and the appropriate FAR case number(s) in all correspondence related to this and the following documents.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–16 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–16 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Contractor Establishment Code (FAR Case 91–81)

FAR 4.602 is amended by revising paragraph (d) to reflect the new Contractor Establishment Code (CEC) numbering system; FAR 4.603 and the solicitation provision at 52.204–4, Contractor Establishment Code, are removed.

Item II—Technical Changes to FAR Part 4, Administrative Matters (FAR Case 91–89)

FAR 4.805 (b) and (e) are revised to clarify retention periods for contracts.

Item III—Publicizing Subcontract Opportunities (FAR Case 91–90)

FAR 5.206 is revised to stress the importance of prime contractors using the Commerce Business Daily to seek additional small, small disadvantaged, and women-owned business subcontracting sources, and to meet subcontracting goals.

Item IV—Metrics (FAR Case 92–611)

FAR 7.103, Agency-head responsibilities, is amended to encourage the use of the metric system of measurement in Government procurements.

Item V—Contractor Versus Government Performance (FAR Case 91–26)

Changes are made to FAR 7.302(d) to alert the contracting officer to the possibility of performing a cost comparison for the specific reason that commercial prices were believed to be unreasonable; and to make more general the language that pertains to when a cost comparison study must be made, so that future changes to statutes or regulations concerning cost comparisons will not require a change to the FAR. Minor editorial changes are made to the solicitation provisions at FAR 52.207–1 and 52.207–2.

Item VI—Change in Government Specified Source for Strategic and Critical Materials From Excess GSA Inventories (FAR Case 91–76)

FAR 8.002(f) is revised to change the Government specified source for excess strategic and critical materials from GSA to DOD.

Item VII—List of Parties Excluded From Procurement Programs (FAR Case 91–65)

FAR 9.404(d) is revised to provide additional guidance on accessing the List of Parties Excluded from Procurement Programs.

Item VIII—Use of Small Purchase Procedures for Personal Services (FAR Case 91–80)

The word "nonpersonal" is deleted from FAR 13.000, and from the definitions of "purchase order" and "small purchase" in FAR 13.101. A new paragraph (c) is also added to FAR 13.103 to emphasize that specific statutory authority is required to purchase personal services. A reference to FAR 37.104 is included.

Item IX—OMB Circular A–133, Audits of Institutions of Higher Learning and Other Nonprofit Institutions (FAR Case 91–38)

Guidance to contracting officers and a contract clause are added to implement the requirements of OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions".

The threshold is increased to the level of the small purchase threshold from $10,000 for application of the Examination of Records by Comptroller General clause and for application of the Audit-Negotiation clause to subcontracts.

Item X—Clarify Increased Cost or Pricing Data Threshold (FAR Case 91–96)

This interim rule amends FAR 15.804–2 to clarify application of the $500,000 threshold for submission of certified cost or pricing data for contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard. This rule implements section 804 of the FY 92 Defense Authorization Act, Public Law 102–190.

Item XI—Nonmanufacturer Rule (FAR Case 91–50) (Interim Rule)

This interim rule revises FAR 19.001 and 19.102 to add a definition for the term "nonmanufacturer rule", to address Small Business Administration waiver of the nonmanufacturer rule for specific items, and to remove the partial listing of classes for which a waiver has been granted.

Item XII—Bundling of Requirements (FAR Case 91–49)

This converts the interim rule on Bundling of Requirements, published in the **Federal Register** at 56 FR 67132 on December 27, 1991, as Item VI of FAC 90–9, to a final rule with one minor revision, which is the addition of the word "realistic" at FAR 19.202–1(e)(2)(ii). FAR 19.202–1 was revised to require contracting officers to forward proposed acquisitions meeting specified criteria to the SBA's procurement center representatives for review. FAR 19.402 was revised to require that procurement center representatives recommend alternative contracting methods for acquisitions which have increased or consolidated requirements that make it unlikely that small businesses can compete.

XIII—Part 22 Threshold, Compensation Plans for Professional Employees (FAR Case 90–68)

FAR 22.1101 and 22.1103 are amended to raise the threshold from $250,000 to $500,000 for imposition of the requirement for offerors on acquisitions for negotiated service contracts to submit total compensation plans for professional employees. The provision at FAR 52.222–45 is removed and its language is combined with the provision at FAR 52.222–46 for purposes of simplification.

Item XIV—Determination and Finding of Nonavailability (FAR Case 92–3)

FAR 25.108(d)(1) is amended by adding "wire glass" to the list of items that one or more Federal agencies have determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

Item XV—Part 25 Thresholds (FAR Case 91–64)

The FAR is revised to remove the threshold in FAR 25.202(b) and change the approval level to allow contracting officers, unless agency regulations prescribes otherwise, to make nonavailability determinations in accordance with FAR 25.202(a)(3), if the acquisition is made under full and open competition, is synopsized in accordance with FAR 5.302, and offers for domestic construction materials are not received.

XVI—Severance Pay, Foreign Nationals (FAR Case 90–30)

This final rule removes restrictions on allowability of certain severance payments to foreign nationals, in anticipation of promulgation of the restrictions in the DFARS for DOD use only. This case supersedes FAR case 89–13, which was published in the **Federal Register** at 54 FR 13022 on March 29, 1989.

XVII—GAO Bid Protest Regulations (FAR Case 91–86)

FAR 33.104 is revised to implement the General Accounting Office's revised bid protest procedures which went into effect on April 1, 1991.

Item XVIII—Use of Indicia Mail (FAR Case 91–88)

The text at FAR 42.1404–1, Parcel post eligible shipments, and the clause at FAR 52.242–11, F.o.b. Origin—Government Bills of Lading or Indicia Mail, are revised to clarify the procedure agencies use to obtain authority for contractors to use indicia mail and requires contracting officers to furnish a completed Postal Service Form 3601, Application to Mail Without Affixing Postage Stamps, to contractors. This will make the FAR language consistent with current U.S. Postal Service regulations.

Item XIX—Thresholds, FAR Part 45 (FAR Case 90–12)

FAR 45.105, 45.106, 45.302–3, 45.307–2, and 45.506 are revised, and the clause at FAR 52.245–18 is amended to raise or delete outdated dollar thresholds and to clarify existing policy.

Item XX—Government Property (FAR Case 90–41)

FAR 45.301 and 45.302–3(c) are amended to clarify the Government's policy regarding fee or profit in the acquisition of general purpose components of special tooling and special test equipment. The policy states that the prohibition on profit or fee on the cost of facilities when purchased under other than a facilities contract does not apply to general purpose components of special tooling and special test equipment.

Item XXI—Inventory Schedules, Authority of Contractor's Representative; Withdrawal of FAR Coverage (FAR Case 91–74)

FAR 45.606–1(b) is revised to remove language requiring that the contractor's inventory schedule certificate be signed by a representative having the authority to commit the contractor in contractual matters. This change is a result of adverse industry comments in response to implementation of the language in FAC 90–4. Development of a new Plant Clearance Automated Reutilization Screening System at the Defense Contract Management Command (DCMC), which eliminated hard-copy inventory schedules for contractors under DOD cognizance, will minimize problems the language was intended to address.

Item XXII—Threshold Change to 51.106(b) (FAR Case 91–55)

FAR 51.106(b), Title, is revised by raising the threshold listed therein from $1,000 to $5,000, in order to be consistent with the threshold listed in FAR 52.245–2, Alternate II, and FAR 52.245–5, Alternate I, to which FAR 51.106(b) refers.

Item XXIII—Standard Forms 254 and 255, Architect-Engineer Questionnaires

Standard Form 254, Architect-Engineer and Related Services Questionnaire, and Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project have been revised to delete the obsolete definition of Architect-Engineer services on the forms and will reference the definition in FAR part 36. Corresponding changes are made to the prescriptive language for the forms at FAR 53.236–2 (b) and (c).

Item XXIV—Technical Corrections

Technical revisions have been made to FAR parts 15, 19, 31, 33, and 52 for clarification and to correct references and terms.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–16 is effective February 19, 1993, except for the following items:

Item I, which is effective October 1, 1992;

Items X and XI, which are effective December 21, 1992; and

Item XVII, which is effective April 1, 1993.

Dated: December 3, 1992.

Eleanor R. Spector,

Director, Defense Procurement, DOD.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy, GSA.

Dated: November 13, 1992.

Don G. Bush,

Assistant Administrator for Procurement, NASA.

[FR Doc. 92–30560 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 52

[FAC 90–16; FAR Case 91–81; Item I]

Federal Acquisition Regulation; Contractor Establishment Code

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend FAR 4.602, Federal Procurement Data System (FPDS), and to remove the solicitation provision at 52.204–4, Contractor Establishment Code, and its prescriptive language at 4.603. These revisions implement the new Government-owned, contractor-operated contractor establishment code (CEC) numbering system to identify Federal contractors. This system replaces the Dun and Bradstreet Data Universal Numbering System which is currently being phased out.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16/FAR case 91–81.

SUPPLEMENTARY INFORMATION:

A. Background

On September 5, 1991, the General Services Administration awarded a contract for contractor identification services in the Federal Procurement Data System. The contract requires the establishment of a Government-owned, contractor-operated contractor establishment code (CEC) numbering system to identify Federal contractors. This new system (a nine-position alpha-numeric numbering system) replaces the Dun and Bradstreet Data Universal Numbering System (DUNS) that is currently being used in the data system.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C 610. Such comments must be submitted separately and cite 5 U.S.C 610, *et seq.* (FAC 90–16, FAR case 91–81), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4 and 52

Government Procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 4 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.602 is amended by revising paragraph (d) to read as follows:

4.602 Federal Procurement Data System.

* * * * *

(d) The contracting officer shall obtain and report a Contractor Establishment Code for each awardee from information on file or available to the contracting office. The contracting office or other designated agency office shall request a code using the procedures in the FPDS Reporting Manual or in accordance with agency procedures. Requests for codes shall be made by Government offices and only for the apparent awardees.

4.603 [Removed]

4. Section 4.603 is removed.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–4 [Removed]

5. Section 52.204–4 is removed.

[FR Doc. 92–30562 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 90–16; FAR Case 91–89; Item II]

Federal Acquisition Regulation; Technical Changes to FAR Part 4, Administrative Matters

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to clarify FAR 4.805, Disposal of contract files, with respect to the retention period for certain contracts.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia McGuire at (202) 501–4787 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–16, FAR case 91–89.

SUPPLEMENTARY INFORMATION:

A. Background

The two Councils agreed that the existing language at FAR 4.805 (b) and (e) does not accurately reflect the files disposition instructions contained in the National Archives and Records Administration's General Records Schedule (GRS) 3 dated June 1988. This change will bring FAR language in line with the GRS.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–89), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 4 is amended as set forth below:

PART 4—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR part 4 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 4.805 is amended by revising the introductory paragraph and paragraphs (b) and (e) of the "Document" column to read as follows:

4.805 Disposal of contract files.

Agencies shall prescribe procedures for the handling, storing, and disposing of contract files. However, such procedures shall include provisions that the documents specified below shall not be destroyed before the times indicated. If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents covered by these schedules are part of a subject or case file which documents activities different from those covered by the schedules, they should be treated in the same manner as the files of which they are a part.

Document	Retention period
(a) * * *	* * *
(b) Signed originals of construction contracts over $2,000 and all other contracts over $25,000.	* * *
* * * * *	*
(e) Signed originals of construction contracts of $2,000 or less and all other contracts of $25,000 or less.	* * *
* * * * *	*

[FR Doc. 92–30561 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 5

[FAC 90–16; FAR Case 91–90; Item III]

Federal Acquisition Regulation; Publicizing Subcontract Opportunities

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise FAR 5.206 to stress the importance of prime contractors using the Commerce Business Daily to seek additional small, small disadvantaged, and women-owned business subcontracting sources, and to meet subcontracting goals.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–90.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–90), in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subject in 48 CFR Part 5

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 5 is amended as set forth below:

PART 5—PUBLICIZING CONTRACT ACTIONS

1. The authority citation for 48 CFR part 5 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 5.206 is revised to read as follows:

5.206 Publicizing subcontract opportunities.

Prime contractors may use the CBD to publicize subcontracting opportunities stemming from receipt of a Government contract. The CBD can be used to seek competition for subcontracts, to increase participation by small, small disadvantaged, and women-owned business firms, and to meet established subcontracting plan goals. Synopses of subcontract opportunities should be prepared and submitted in accordance with 5.207.

[FR Doc. 92-30563 Filed 12-18-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 7

[FAC 90-16; FAR Case 92-611; Item IV]

Federal Acquisition Regulation; Metrics

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending FAR 7.103, Agency-head responsibilities, to encourage the use of the metric system of measurement in Government procurements.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-16, FAR Case 92-611.

SUPPLEMENTARY INFORMATION:

A. Background

15 U.S.C. 205b and Executive Order 12770 require all Federal agencies to use the metric system of measurement in their procurements. This revision to FAR 7.103 supplements the existing metric guidance at FAR 10.002(c) by requiring agencies to establish procedures for addressing metrics at the start of the acquisition process.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-16, FAR case 92-611), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 7

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 7 is amended as set forth below:

PART 7—ACQUISITION PLANNING

1. The authority citation for 48 CFR part 7 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 7.103 is amended by adding paragraph (l) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(l) Ensuring that agency planners include use of the metric system of measurement in proposed acquisitions in accordance with 15 U.S.C. 205b (see 10.002(c)) and agency metric plans and guidelines.

[FR Doc. 92-30564 Filed 12-18-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 52

[FAC 90-16; FAR Case 91-26; Item V]

Federal Acquisition Regulation; Contractor Versus Government Performance

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to this final rule which (a) alerts the contracting officer to the possibility of performing a cost comparison for the specific reason that commercial prices were believed to be unreasonable; and (b) makes more general the language that pertains to when a cost comparison study must be made, so that future changes to statutes or regulations concerning cost comparisons will not require a change to FAR language. The proposed rule was published for public comment in the Federal Register at 55 FR 29556 on June 27, 1991.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-16, FAR Case 91-26.

SUPPLEMENTARY INFORMATION:

A. Background

This change was generated as part of the Department of Defense effort to streamline its acquisition regulations, and is made to correct inconsistencies between FAR Subpart 7.3 and Office of Management and Budget OMB Circular A-76.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final

rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes merely remove inconsistencies between the FAR and OMB Circular A–76.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements, or collections of information from offerors, contractors, or members of the public which require OMB approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 7 and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 7 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 7 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.300 is revised to read as follows:

7.300 Scope of subpart.

This subpart prescribes policies and procedures for use in acquisitions of commercial or industrial products and services subject to (a) OMB Circular No. A–76 (Revised) (the Circular), Performance of Commercial Activities, and (b) the Supplement to the Circular.

3. Section 7.302 is amended by revising paragraph (d) to read as follows:

7.302 General.

* * * * *

(d) Provide that, ordinarily, agencies should not incur the delay and expense of conducting cost comparison studies when the full-time equivalent Government employees involved are fewer than those specified by law, the Circular, and implementing agency guidance. Cost comparisons may be conducted in these instances if there is reason to believe that commercial prices are unreasonable.

4. Section 7.303 is amended in paragraph (b)(1) by revising the second sentence and removing the third sentence; and by adding paragraph (b)(3) to read as follows:

7.303 Determining availability of private commercial sources.

* * * * *

(b) * * *

(1) * * * If necessary, synopsis shall be submitted up to three times in a 90-day period with a minimum of 30 days between notices (but, when necessary to meet an urgent requirement, this notification may be limited to a total of two notices in a 30-day period with a minimum of 15 days between them).

(2) * * *

(3) If sufficient sources are not identified through synopses or from subparagraph (b)(2) of this section, a finding that no commercial source is available may be made and the cost comparison canceled.

5. Section 7.304 is amended in paragraph (b)(1) by removing the hyphen from the words "cost-comparison"; and in paragraph (c)(1) by revising the first sentence to read as follows:

7.304 Procedures.

* * * * *

(c) *Solicitation.* (1) The contracting officer shall issue a solicitation based on the performance work statement prepared in accordance with paragraph (a) of this section.

* * *

* * * * *

7.306 [Amended]

6a. Section 7.306 is amended by removing the hyphen from the words "cost-comparison" in the following places: (a)(1)(i) through (a)(1)(iii); (a)(1)(v); (a)(2); (a)(4); (b) introductory text; (b)(1)(ii); (b)(2)(ii); and (b)(3).

7.306 [Amended]

6b. In addition to the amendments set forth above, section 7.306 is amended in paragraph (b)(3) in the last sentence by removing the words "subparagraph (1) above" and "subparagraph (2) above" and inserting "subparagraph (b)(1) of this section" and "subparagraph (b)(2) of this section" in their places, respectively.

7. Section 7.307 is amended by revising paragraph (a) to read as follows:

7.307 Appeals.

(a) The Circular provides that each agency shall establish an appeals procedure for informal administrative review of the initial cost comparison result. The appeals procedure shall provide for an independent, objective review of the initial result by an official at a higher level than the official who approved that result. The purpose is to protect the rights of affected parties and to ensure that final agency determinations are fair, equitable, and in accordance with established policy.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8a. Section 52.207–1 is amended by removing in the clause heading the date "(JUL 1990)" and inserting "(FEB 1993)" in its place; removing the last sentence in paragraph (b) of the clause; and revising the first sentence of paragraph (c) of the clause to read as follows:

52.207–1 Notice of Cost Comparison (Sealed-Bid).

* * * * *

(c) The abstract of bids, completed cost comparison form, and detailed data supporting the cost estimate for Government performance will be made available to interested parties for review for a period of _____[*insert a number from 15 to 30, depending on the complexity of the matter (see 7.306(a)(1)(iv)*] working days, beginning with the date the documents are available to interested parties.

* * * * *

8b. Section 52.207–2 is amended in the clause heading by revising the date; in paragraph (c) by removing the hyphen in the words "cost-estimate"; and revising paragraph (d) to read as follows:

52.207–2 Notice of Cost Comparison (Negotiated).

* * * * *

Notice of Cost Comparison (Negotiated) (Feb. 1993)

* * * * *

(d) During the public review period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost comparison result under the agency appeals procedure. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to questions concerning award to one offeror in preference to another. Agency determinations under the appeals procedure shall be final.

* * * * *

(End of provision)

52.207–1 and 52.207–2 [Amended]

8c. In addition to the amendments set forth above in FAR part 52, remove the hyphen from the words "cost-comparison" in the following places: (a) 52.207–1(b); (b) 52.207–2(c) introductory text, (c)(1), and (c)(2); and (c) 52.207–2(d).

* * * * *

[FR Doc. 92–30565 Filed 12–18–92; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 90–16; FAR Case 91–76; Item VI]

Federal Acquisition Regulation; Change in Government Specified Source for Strategic and Critical Materials from Excess GSA Inventories

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise FAR 8.002(f) to change the Government specified source for excess strategic and critical materials from the General Services Administration to the Department of Defense.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 91–76.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 8.002(f) is revised to change the specified Government source for excess strategic and critical materials from the General Services Administration to the Department of Defense. Executive Order 12626, dated February 25, 1988, transferred management of the stockpile from GSA to DOD and designated the Secretary of Defense as National Defense Stockpile Manager. In May 1988, the authority to manage the Stockpile under Executive Order 12626 was delegated to the Assistant Secretary of Defense (Production and Logistics). Authority to operate the Stockpile was further delegated to the National Defense Stockpile Center, Defense Logistics Agency.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with section 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–76), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 8 is amended as set forth below:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for 48 CFR part 8 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 8.002 is amended by revising paragraph (f) to read as follows:

8.002 Use of other Government supply sources.

* * * * *

(f) Strategic and critical materials (e.g., metals and ores) from inventories exceeding National Defense Stockpile requirements (detailed information is available from the Defense National Stockpile Center, 1745 Jefferson Davis Highway, Crystal Square Building #4, Suite 100, Arlington, VA 22202); and

* * * * *

[FR Doc. 92–30566 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAC 90–16; FAR Case 91–65; Item VII]

Federal Acquisition Regulation; List of Parties Excluded from Procurement Programs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to revise section 9.404(d) to include additional guidance on accessing the list of Parties Excluded from Procurement Programs. The purpose of such guidance is to inform contracting officers and other users of the list of Parties Excluded from Procurement Programs of the means of obtaining information from the list.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–65.

SUPPLEMENTARY INFORMATION:

A. Background

Information concerning parties on the list of Parties Excluded from Procurement Programs is available electronically, in hard copy form, and by telephone. The FAR is being revised to provide guidance on the means of accessing the list.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–65), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the change to the FAR does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 9 is amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 9.404 is amended by revising paragraph (d) to read as follows:

9.404 Parties excluded from procurement programs.

* * * * *

(d) Information on the list of Parties Excluded from Procurement Programs is available as follows:

(1) The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription.

(i) Federal agencies may subscribe to the list through their organization's printing and distribution office.

(ii) The public may subscribe by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783–3238.

(2) The electronic version is updated daily and provides access to the names of firms and individuals on the list by using an asynchronous ASCII terminal (e.g., a word processor or microcomputer). Users can access the system 24 hours a day, 7 days a week using FTS 2000, or commercial telephone lines and the equipment described in the user's manual. Aside from the normal costs of local or long-distance telephone calls, access is free of charge to the user. To obtain a copy of the user's manual for accessing the system, contact GSA at (202) 501–4740.

(3) A telephone inquiry service to answer general questions about entries on the list of Parties Excluded from Procurement Programs is also available by calling GSA at (202) 501–0688. The inquiry will be answered within one working day.

[FR Doc. 92–30567 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 13

[FAC 90–16; FAR Case 91–80; Item VIII]

Federal Acquisition Regulation; Use of Small Purchase Procedures for Personal Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to remove the word "nonpersonal" from Federal Acquisition Regulation (FAR) 13.000, and from the definitions of "purchase order" and "small purchase" in section 13.101 to permit the use of small purchase procedures for the acquisition of personal services.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–80.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense has granted deviations to FAR part 13 to defense agencies that regularly contract for professional health care personal services to permit them to use simplified purchase procedures when the total amount of the contract is less than the small purchase limitation in FAR 13.000. The statutes which govern the acquisition of personal services do not restrict the contracting method, which can be used to acquire services, and the Civilian Agency Acquisition Council agree there is no reason to impose a restriction in the FAR.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–80), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 13

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 13 is amended as set forth below:

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority citation for 48 CFR part 13 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

13.000 [Amended]

2. Section 13.000 is amended by removing the word "nonpersonal".

13.101 [Amended]

3. Section 13.101 is amended in the definitions of "purchase order" and "small purchase" by removing the word "nonpersonal".

4. Section 13.103 is amended by adding paragraph (c) to read as follows:

13.103 Policy.

* * * * *

(c) Small purchase procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services by contract (see 37.104).

[FR Doc. 92–30568 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAC 90-16; FAR Case 91-38; Item IX]

Federal Acquisition Regulation; OMB Circular A-133, Audits of Institutions of Higher Learning and Other Nonprofit Organizations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation to add guidance and a contract clause to implement the requirements of OMB Circular A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions" and to increase the $10,000 threshold for application of access to records clauses to the small purchase threshold.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-16, FAR Case 91-38.

SUPPLEMENTARY INFORMATION:

A. Background

OMB Circular A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions" establishes a policy for efficient and effective use of audit services for awards made to certain institutions. The final rule provides that the circular will apply to cost-reimbursement contracts with those institutions.

The Examination of Records by Comptroller General clause 52.215-1, previously applied to negotiated contracts and subcontracts exceeding $10,000 and the Audit-Negotiation clause, 52.215-2, applied to subcontracts over $10,000. The final rule raises those amounts to the level of the small purchase threshold (currently $25,000).

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule implementing OMB Circular A-133 does not create or change any responsibilities. It facilitates implementation of the already existing requirements of the OMB Circular. The portions of the rule which increase the threshold for applications of the Examination of Records by Comptroller General clause and Audit-Negotiation clause do not have a significant impact on a substantial number of small businesses because most contracts awarded to small businesses are awarded on the basis of sealed bids and the clauses do not apply. No small entities commented on the proposed rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies because the final rule contains information collection requirements. Accordingly, a request for approval of a revision to an information collection requirement concerning OMB Control No. 9000-0034, Examination of Records by Comptroller General and Audit-Negotiation, was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Approval of the reduced burden was granted on October 10, 1991, by the Office of Information and Regulatory Affairs, Office of Management and Budget. Public comments concerning this request were invited through a subsequent **Federal Register** notice at 56 FR 33272 on July 19, 1991.

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.106-2 is amended by revising paragraph (a) and adding a third sentence to paragraph (b) to read as follows:

15.106-2 Audit—Negotiation clause.

(a) This subsection implements 10 U.S.C. 2313(a), 41 U.S.C. 254(b), 10 U.S.C. 2306(f), and OMB Circular No. A-133.

(b) * * * In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.215-1 [Amended]

3. Section 52.215-1 is amended in the clause heading by removing the date "(APR 1984)" and inserting "(FEB 1993)" in its place; in paragraph (a) by removing the dollar amount "$10,000" and inserting the words "the small purchase limitation in Part 13 of the Federal Acquisition Regulation (FAR)" in its place; in paragraph (b) by removing the words "Federal Acquisition Regulation (FAR)" and inserting "FAR" in their place; and in paragraph (c)(1) by removing the dollar amount "$10,000" and inserting the words "the FAR Part 13 small purchase limitation" in its place.

4. Section 52.215-2 is amended in the clause heading by removing the date "(DEC 1989)" and inserting "(FEB 1993)" in its place; in paragraph (d) by adding the acronym "(FAR)" after the words "Federal Acquisition Regulation"; by revising paragraph (f); by removing the derivation lines "(R 7-104.41(b) 1978 AUG)", "(R 7-702.48)", "(R 7-703.41)" and "(R 7-704.33)" appearing at the end of the Alternate I; and by adding Alternate II to read as follows:

52.215-2 Audit—Negotiation.

* * * * *

(f) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (f), in all subcontracts under this contract that are over the small purchase limitation in FAR Part 13, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.
(End of clause)

Alternate I * * *

Alternate II (FEB 1993). In cost-reimbursement contracts with educational and other nonprofit institutions, add the following paragraph (g) to the basic clause:

(g) The provisions of OMC Circular No. A-133, "Audits of Institutions of Higher

Learning and Other Nonprofit Institutions," apply to this contract.

[FR Doc. 92-30569 Filed 12-18-92; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 90-16; FAR Case 91-96; Item X]

Federal Acquisition Regulation; Clarify Increased Cost or Pricing Data Threshold

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule revising FAR 15.804-2 to clarify application of the $500,000 threshold for submission of certified cost or pricing data.

DATES: Effective Date: December 21, 1992.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 19, 1993 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Attn: Ms. Deloris Baker, Washington, DC 20405.

Please cite FAC 90-16, FAR case 91-96 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-16, FAR case 91-96.

SUPPLEMENTARY INFORMATION:

A. Background

FAC 90-10 increased the threshold for submission of cost or pricing data to $500,000 for DOD, NASA, and the Coast Guard. This interim rule implements section 804 of the FY 92 Defense Authorization Act, which amends 10 U.S.C. 2306a(a)(1), to specify that the $500,000 threshold for DOD, Coast Guard, and NASA, also applies to subcontracts entered into after December 5, 1991, under prime contracts entered into on or before December 5, 1990, if the prime contract is modified to incorporate the $500,000 threshold. It also specifies that the $500,000 threshold applies to changes or modifications made after December 5, 1991, when the prime contract is modified to incorporate the $500,000 threshold.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the requirements for certified cost or pricing data do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601 *et seq.* (FAC 90-16, FAR Case 91-96), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies. This rule clarifies a rule previously promulgated under FAR Case 91-53, Increase in Cost or Pricing Data Threshold. A request for approval of a revision to reduce the burden of a currently approved information collection requirement concerning Increase in Cost or Pricing Data Threshold was submitted to the Office of Management and Budget (OMB) and approved under OMB control number 9000-0013.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 804 of Public Law 102-190 amended section 2306a(a)(1) of title 10, United States Code, to clarify revised thresholds for contractor certification of cost or pricing data. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 15 is amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.804-2 is amended in paragraph (a)(1)(ii) by removing the first sentence and adding in its place two sentences as set forth below; revising paragraphs (a)(1)(iii) and (a)(1)(iv); and redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5) and adding a new paragraph (a)(2) to read as follows:

15.804-2 Requiring certified cost or pricing data.

(a)(1) * * *

(ii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for modifications involving a price adjustment expected to exceed $500,000, if the contract includes or has been modified in accordance with 15.804-2(a)(2) to include the $500,000 threshold. Price adjustment amounts shall consider both increases and decreases * * *.

(iii) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish certified cost or pricing data, when the subcontract is expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for subcontracts expected to exceed $500,000 if the contract includes, or has been modified to include, the $500,000 threshold per 15.804-2(a)(2). (But see 15.804-3(i).)

(iv) The modification of any subcontract covered by subdivision (a)(1)(iii) of this subsection, when the price adjustment (see subdivision (a)(1)(ii) of this subsection) is expected to exceed $100,000, or for the Department of Defense, the National

Aeronautics and Space Administration, and the Coast Guard, for subcontracts when the modification involves a price adjustment expected to exceed $500,000 if the contract includes or has been modified to include the $500,000 threshold per 15.804–2(a)(2).

(2) Department of Defense, National Aeronautics and Space Administration, and Coast Guard contracting officers shall, if requested by the contractor, modify contracts entered into on or before December 5, 1990, to incorporate the $500,000 threshold without requiring consideration. Contracting officers shall comply with contractors' requests for the threshold increase unless a contracting officer determines in accordance with the criteria at 15.804–2(a)(3) that a change in the threshold is not in the best interests of the Government. The requirement to submit certified cost or pricing data shall be determined by the threshold in the contract at the time of agreement on price regardless of when an undefinitized modification, change order or subcontract is issued.

* * * * *

[FR Doc. 92–30570 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90–16; FAR Case 91–50; Item XI]

Federal Acquisition Regulation; Nonmanufacturer Rule

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are amending FAR 19.001 and 19.102 to add a definition for the term "Nonmanufacturer rule", to address the Small Business Administration (SBA) waiver of the rule, and to remove the partial listing of classes listed in the FAR for which a waiver has been granted.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–50.

SUPPLEMENTARY INFORMATION:

A. Background

Section 210 of Public Law 101–574 authorizes the SBA to waive the nonmanufacturer rule as it applies to a specific product, as well as to classes of products. Heretofore, SBA waivers were not issued on a contract-by-contract basis but, rather, waivers were issued for classes of products.

B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it may mean that more small business set-asides will be possible. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

Section 210 of Public Law 101–574, the Small Business and Reauthorization and Amendments Act of 1990, amends the Small Business Act as to the Small Business Administration's authority to waive the requirement for offerors under a small-business set-aside or 8(a) award to provide the product of a small business concern. Section 210 provides for waivers of a specific product, as well as a class of products. Accordingly, this rule could have a favorable impact on small businesses.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the SBA. A copy of the analysis may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite FAR case 91–50 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement section 210 of Public Law 101–574, which was effective upon enactment November 15, 1990.

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 19 is amended as set forth below:

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.001 is amended by adding the definition of "Nonmanufacturer rule" in alphabetical order to read as follows:

19.001 Definitions.

* * * * *

Nonmanufacturer rule means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own produce or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.906).

* * * * *

3. Section 19.102 is amended by revising the first sentence in paragraph (f)(1) and revising paragraph (f)(5) to read as follows:

19.102 Size standards.

* * * * *

(f) * * *

(1) Except as provided in subparagraphs (f)(2) through (f)(5) of this section, in the case of Government acquisitions set aside for small businesses, such nonmanufacturer must furnish in the performance of the contract, the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States. * * *

* * * * *

(5) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific

product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then—

(i) In such cases, section 637(a)(17)(A) of the Small Business Act provides that the nonmanufacturer may furnish any domestic product if such nonmanufacturer is primarily engaged in the wholesale or retail trade and is a regular dealer, as defined pursuant to 41 U.S.C. 35(a) (see 22.601), in the product to be offered unless specifically exempted by section 7(j)(13)(C) of the Small Business Act. For the most current listing of classes for which SBA has granted a waiver, contact the regional SBA office.

(ii) Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products.

(iii) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if the contracting officer determines that no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(iv) Requests for waivers shall be sent to the Chairman of the Size Standards Policy Board, SBA Central Office, 409 Third Street, SW., Washington, DC 20416.

* * * * *

[FR Doc. 92–30571 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90–16; FAR Case 91–49; Item XII]

Federal Acquisition Regulation; Bundling of Requirements, FAR Part 19

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule revising FAR 19.202–1 to require contracting officers to forward proposed acquisitions meeting specified criteria to the Small Business Administration's procurement center representatives for review, and FAR 19.402 to require that procurement center representatives recommend alternative contracting methods for acquisitions which have increased or consolidated requirements that make it unlikely that small businesses can compete.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 91–49.

SUPPLEMENTARY INFORMATION:

A. Background

Section 208 of Public Law 101–574 requires, whenever a proposed procurement of supplies or services currently being provided by a small business is of a quantity or estimated dollar value which makes small business prime contracting unlikely or when discrete construction projects are consolidated, that the procurement activity provide a copy of the proposed acquisition to the Small Business Administration's procurement center representative (PCR) for review and that the PCR recommend alternative contracting methods.

An interim rule was published in Federal Acquisition Circular (FAC) 90–9 in the **Federal Register** at 56 FR 67131 on December 27, 1991. This interim rule is hereby adopted as final with one change; the word "realistic" was added in 19.202–1(e)(2)(ii).

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule may benefit small business contractors in that it may provide additional opportunities for them to compete for Government contracts. No comments were received on the impact of this rule on small entities during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final With One Change

Accordingly, the interim rule amending 48 CFR part 19 which was published at 56 FR 67131 on December 27, 1991, is hereby adopted as a final rule with the following change:

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

19.202–1 [Amended]

2. Section 19.202–1 is amended in paragraph (e)(2)(ii) by inserting the word "realistic" after the word "a".

* * * * *

[FR Doc. 92–30572 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

RIN 9000–AE45

[FAC 90–16; FAR Case 90–68; Item XIII]

Federal Acquisition Regulation; Part 22 Threshold, Compensation Plans for Professional Employees

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending Federal Acquisition Regulation (FAR) 22.1101 and 22.1103 to raise the threshold from $250,000 to $500,000 for imposition of

a requirement for offerors on acquisitions for negotiated service contracts to submit total compensation plans. The provision at FAR 52.222–45 is removed and reserved and its language is combined with the provision at FAR 52.222–46 for purposes of simplification.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 90–68.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 22.1101 and 22.1103 are amended to raise the threshold from $250,000 to $500,000 for imposition of a requirement for offerors on acquisitions for negotiated service contracts to submit total compensation plans. The provision at FAR 52.222–45 is removed and reserved and its language is combined with the provision at FAR 52.222–46 for simplification. The threshold is raised to reflect inflation.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule reduces the number of instances in which offerors, as part of a cost proposal, will have to submit compensation plans for professional employees.

C. Paperwork Reduction Act

This final rule contains reduced information collection requirements. Accordingly, a revised burden estimate was approved by the Office of Management and Budget (OMB) on February 18, 1992 for OMB Clearance No. 9000–0066 for use through February 28, 1995.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1101 [Amended]

2. Section 22.1101 is amended in the last sentence by removing the amount "$250,000" and inserting in its place "$500,000".

3. Section 22.1103 is revised to read as follows:

22.1103 Policy, procedures, and solicitation provision.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at 52.222–46, Evaluation of Compensation for Professional Employees, in solicitations for negotiated service contracts when the contract amount is expected to exceed $500,000 and the service to be provided will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employees compensation may be assessed adversely as one of the factors considered in making an award.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.222–45 [Reserved]

4. Section 52.222–45 is removed and reserved.

5. Section 52.222–46 is amended in the introductory text by inserting a colon after the word "provision" and removing the remainder of the sentence; removing the date "(APR 1984)" in the provision title and inserting in its place "(FEB 1993)"; removing the derivation line reading "(R 7–2003.79 1978 JUN)" following "(End of provision)" after paragraph (c); and adding paragraph (d) to read as follows:

52.222–46 Evaluation of compensation for professional employees.

As prescribed in 22.1103, insert the following provision:

EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993)

* * * * *

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

(End of provision)

[FR Doc. 92–30573 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 90–16; FAR Case 92–3; Item XIV]

Federal Acquisition Regulation; Determination and Finding of Nonavailability

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending FAR 25.108(d)(1) to add "wire glass" to the list of items that one or more Federal agencies have determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–16, FAR Case 92–3.

SUPPLEMENTARY INFORMATION:

A. Background

The addition of "wire glass" to the list in FAR 25.108(d)(1), of articles, materials, and supplies that are determined not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, was based on an agency's determination of nonavailability under the Buy American Act.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 92–3), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.108 [Amended]

2. Section 25.108 is amended in paragraph (d)(1) by adding in alphabetical order "wire glass" to the list of "articles, materials, and supplies".

[FR Doc. 92–30574 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 90–16; FAR Case 91–64; Item XV]

Federal Acquisition Regulation; Part 25 Thresholds

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending Federal Acquisition Regulation (FAR) 25.202(b) to lower the approval level for determinations of nonavailability on construction materials.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–64.

SUPPLEMENTARY INFORMATION:

A. Background

Dollar thresholds in FAR part 25 were reviewed for currency, clarity, and necessity. The $100,000 threshold in FAR 25.202(b) has been removed and the language revised to permit delegation of authority below the level of head of the contracting activity for determinations of nonavailability of construction materials.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–64) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.202 [Amended]

2. Section 25.202 is amended in paragraph (a)(3) by adding after the word "The" the words "head of the contracting activity or designee determines the"; removing paragraph (b); and redesignating paragraph (c) as paragraph (b).

[FR Doc. 92–30575 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31, 37, and 52

[FAC 90–16; FAR Case 90–30; Item XVI]

Federal Acquisition Regulation; Severence Pay, Foreign Nationals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule that supersedes two interim rules. Restrictions on allowability of certain severance payments to foreign national contractor employees have been removed.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 90–30.

SUPPLEMENTARY INFORMATION:

A. Background

The first interim rule under FAR case 89–13 was published in the **Federal Register** at 54 FR 13022 on March 29, 1989, as Federal Acquisition Circular (FAC) 84–44 and included restrictions on allowability of severance pay for foreign nationals pursuant to statutory requirements under Section 322 of Public Law 100–456. Use of those restrictions was mandatory on DOD

contracts and optional on civilian agency contracts. The second interim rule under FAR case 90–30 amended the first interim rule (FAR Case 89–13) to incorporate additional statutory requirements of section 311(a) of Public Law 101–189, regarding base closures. FAR Case 90–30 (the second interim rule) was published in the **Federal Register** at 55 FR 52782 on December 21, 1990, as FAC 90–3. Use of the revised restrictions was made mandatory for covered contracts for all agencies. This final rule removes both restrictions on severance pay from the Governmentwide FAR in anticipation of promulgation of the restrictions in the DOD supplement, the DFARS. This final rule also supersedes FAR Case 89–13 in the **Federal Register** at 54 FR 13022 on March 29, 1989, and FAR cases 90–30 in the **Federal Register** at 55 FR 52782 on December 21, 1990.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31, 37, and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 31, 37, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 31, 37, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–6 [Amended]

2. Section 31.205–6 is amended in paragraph (g)(2)(i)(D) by removing the parenthetical "(but see 37.110(f) regarding services performed outside the United States)".

PART 37—SERVICE CONTRACTING

37.110 [Amended]

3. Section 37.110 is amended by removing paragraph (f).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.237–8 [Removed and reserved]

4. Section 52.237–8 is removed and reserved.

[FR Doc. 92–30576 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAC 90–16; FAR Case 91–86; Item XVII]

Federal Acquisition Regulation; GAO Bid Protest Regulations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule revising FAR 33.104 to implement the General Accounting Office's revised bid protest procedures which went into effect on April 1, 1991.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR case 91–86.

SUPPLEMENTARY INFORMATION:

A. Background

This rule is being published as a final rule without prior publication as a proposed rule because it is not a significant revision within the meaning of FAR 1.501 and involves only internal agency operating procedures.

The General Accounting Office (GAO) revised its bid protest rules (4 CFR part 21) effective April 1, 1991. This FAR final rule implements only those changes in GAO's rules which are essential to the contracting officer. The most significant of these address the information an agency is required to provide to GAO, protective orders issued by GAO, and formal fact-finding hearings. FAR 33.104 has been substantially rewritten to implement GAO's revised rules and to revise the coverage to present a more logical order and make other editorial improvements.

"All evaluation documents" are added to the list of documents an agency report must now include (33.104(a)(3)(ii)(D)); in addition to the documents contained in the report, agencies must also make available to GAO any relevant document specifically requested by the protestor (33.104(a)(3)(iii)). GAO's new rules provide interested parties with easier access to documents, and FAR 33.104(a)(5) addresses requests for, and GAO issuance of, protective orders to limit the right to use and disclose released documents. FAR 33.104(e) provides notice of the GAO's formal fact-finding hearings, with minimal discussion of GAO's detailed procedures. In addition, in lieu of defining the term "day" in this section of the FAR, the terms "work day" or "calendar day" have been used throughout 33.104, consistent with the usage of those terms in 31 U.S.C. 3551 and 4 CFR part 21.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. The rule implements GAO's revised bid protest procedures (4 CFR part 21) by incorporating those revised procedures which are essential to contracting officers; it does not impact the involvement of small entities in the GAO bid protest process. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 610, *et seq.* (FAC 90–16, FAR case 91–86), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office

of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 33

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 33 is amended as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR part 33 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 33.104 is revised to read as follows:

33.104 Protests to GAO.

This section implements the GAO's Bid Protest Regulations as set forth at 4 CFR part 21.

(a) *General procedures.* (1) A protestor is required to furnish a copy of its complete protest to the official or location designated in the solicitation or, in the absence of such a designation, to the contracting officer, so it is received no later than 1 work day after the protest is filed with the GAO. The GAO may dismiss the protest if the protestor fails to furnish a complete copy of the protest within 1 work day.

(2) Immediately after receipt of the GAO's written notice that a protest has been filed, the agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a substantial and reasonable prospect of receiving award if the protest is denied. The agency shall furnish copies of the protest submissions to such parties with instructions to (i) communicate directly with the GAO, and (ii) provide copies of any such communication to the agency and to other participating parties when they become known.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency shall submit a complete report to the GAO within 25 work days after the GAO notifies the agency by telephone that a protest has been filed, or within 10 work days after receipt from the GAO of a determination to use the express option, unless the GAO—

(A) Advises the agency that the protest has been dismissed; or

(B) Authorizes a longer period in response to an agency's written request for an extension. Any new date shall be documented in the agency's protest file.

(ii) The agency report to the GAO shall include, as appropriate, a copy of—

(A) The protest;

(B) The offer submitted by the protesting offeror;

(C) The offer which is being considered for award or which is being protested;

(D) All evaluation documents;

(E) The solicitation, including the specifications or portions relevant to the protest;

(F) The abstract of offers or relevant portions;

(G) Any other documents that the agency determines are relevant to the protest;

(H) The contracting officer's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the contract action or contract performance continues after receipt of the protest, the report will include the determination(s) prescribed in paragraphs (b) or (c) of this section;

(I) A list identifying the other parties who are being provided copies of the report; and

(J) A list of the documents withheld from the protestor and other interested parties, and the reasons for withholding them. The list shall identify any documents specifically requested by, and withheld from, the protestor.

(iii) In addition to the documents contained in the report, the agency shall make available to the GAO any documents specifically requested by the protestor.

(4)(i) At the same time the agency submits its report to the GAO, the agency shall furnish copies of its report to the protestor and other interested parties who have responded to the notice given under subparagraph (a)(2) of this section. A party shall receive all relevant documents, except—

(A) Those that the agency has decided to withhold from that party for any reason, including those covered by a protective order issued by the GAO. Documents covered by a protective order shall be released only in accordance with the terms of the order. Examples of documents the agency may decide to exclude from a copy of the report include documents previously furnished to or prepared by a party; classified information; and information that would give the party a competitive advantage; and

(B) Protestor's documents which the agency determines, pursuant to law or regulation, to withhold from any interested party.

(ii)(A) If, within 2 work days after receipt of the agency report, the protestor requests additional documents, the agency shall provide the requested documents, if relevant, to the GAO within 5 work days of receipt of the request.

(B) The additional documents shall also be provided to the protestor and other interested parties within this 5-workday period unless the agency has decided to withhold them for any reason (see subdivision (a)(4)(i) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the order. A request for a protective order to cover the additional documents shall be made in accordance with 33.104(a)(5) within this 5-workday period.

(C) The agency shall notify the GAO of any documents withheld from the protestor and other interested parties and shall state the reasons for withholding them.

(5) The GAO may issue a protective order to limit the release of particular documents to counsel for the protestor and to counsel for the other interested parties entitled to receive the documents if the documents contain information that is privileged, or if their release would create a competitive advantage.

(i) *Requests for protective orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, but not more than 20 work days after the protest filing date, with copies furnished simultaneously to all parties.

(ii) *Exclusions and rebuttals.* Within 2 work days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties. Within 1 work day after receipt of a copy of the request, any rebuttal shall be filed with GAO, with copies furnished simultaneously to all parties.

(iii) *Additional documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not

already covered by the protective order be included in the order. Request shall be filed with the GAO, with copies furnished simultaneously to all parties. Any rebuttal to such a request must be filed within 1 work day after receipt of a copy of the request.

(iv) *Sanctions and remedies.* The GAO may impose appropriate sanctions for any violation of the terms of the protective order. Improper disclosure of protected information will entitle the aggrieved party to all appropriate remedies under law or equity. The GAO may also take appropriate action against an agency which fails to provide documents designated in a protective order.

(6) The protestor and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within 10 work days, 5 work days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 7 work days after the hearing.

(7) Agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both field and headquarters offices, if desired) whom the GAO may contact who are knowledgeable about the subject matter of the protest. Each agency shall be responsible for promptly advising the GAO of any change in the designated officials.

(b) *Protests before award.* (1) When the agency has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded unless authorized, in accordance with agency procedures, by the head of the contracting activity, on a nondelegable basis, upon a written finding that—

(i) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit awaiting the decision of the GAO; and

(ii) Award is likely to occur within 30 calendar days of the written finding.

(2) A contract award shall not be authorized until the agency has notified the GAO of the finding in subparagraph (b)(1) of this section.

(3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding under subparagraph (b)(1) of this section.

(c) *Protests after award.* (1) When the agency receives notice of a protest from the GAO after award of a contact, but within 10 calendar days after award, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in subparagraphs (c) (2) and (3) of this section.

(2) In accordance with agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—

(i) Contract performance will be in the best interests of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(3) Contract performance shall not be authorized until the agency has notified the GAO of the finding in subparagraph (c)(2) of this section.

(4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(5) When the agency receives notice of a protest filed with the GAO more than 10 calendar days after award of the protested acquisition, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

(d) *Findings and notice.* If the decision is to proceed with contract award, or continue contract performance under paragraphs (b) or (c) of this section, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protestor and other interested parties.

(e) *Hearings.* The GAO may hold a hearing at the request of the agency, a protestor, or other interested party who has responded to the notice in 33.104(a)(2). The GAO may designate representatives of the parties to attend the hearing. The attending parties and the hearing official may question representatives of the parties at the hearing. A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO for a fee. All parties may file comments on the hearing and report within 7 work days of the hearing.

(f) *GAO decision time.* GAO will issue its recommendation on a protest within 90 work days from the date of filing of the protest with the GAO, or within 45 calendar days under the express option, unless GAO establishes a longer period of time.

(g) *Notice to GAO.* The head of the agency or a designee (not below the level of the head of the contracting activity) responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General within 60 calendar days of receipt of the GAO's recommendation if the agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation, including any recommendation concerning the award of protest costs (i.e., the costs of filing and pursuing the protest, including reasonable attorneys' fees and bid and proposal preparation), will not be followed by the agency.

(h) *Award of protest costs.* Pending a final, nonappealable judicial determination of the constitutionality of 31 U.S.C. 3554(c), a recommended award of protest costs (as defined under paragraph (g) of this section) may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services, but such payments may be subject to recoupment by the agency if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional. Before paying a recommended award of protest costs (as defined under paragraph (g) of this section), agency personnel should consult the General Counsel's office of the agency. This paragraph (h) applies to all recommended awards of protest costs (as defined under paragraph (g) of this section) which have not yet been paid.

[FR Doc. 92–30577 Filed 12–18–92; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 52

[FAC 90–16; FAR Case 91–88; Item XVIII]

Federal Acquisition Regulation; Use of Indicia Mail

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend FAR 42.1404–1, Parcel post eligible shipments, and the clause at 52.242–11, F.o.b. Origin—Government Bills of Lading or Indicia Mail, to conform the language to the U.S. Postal Service Domestic Mail Manual. The final rule clarifies the procedures agencies use to obtain authority for contractors to use indicia mail.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 91–88/FAC 90–16.

SUPPLEMENTARY INFORMATION:

A. Background

A recent review of the text at FAR 42.1404–1 and the clause at 52.242–11 indicated that the citations needed updating to clarify agency procedures and responsibilities in obtaining authorization for contractors to use indicia mail and to conform the FAR to language in the U.S. Postal Service Domestic Mail Manual.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–88), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 42 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION

2. Section 42.1404–1 is amended by revising paragraph (b) to read as follows:

42.1404–1 Parcel post eligible shipments.

* * * * *

(b)(1) Authority for contractors to use indicia mail may be obtained by submitting Postal Service (PS) Form 3601, Application to Mail Without Affixing Postage Stamps, to the U.S. Postal Service for approval, following agency procedures. If approval is granted, the agency shall follow the U.S. Postal Service permit requirements.

(2) When indicia mail is used, the contractor will be provided with a completed PS Form 3601 and official penalty permit imprint mailing labels, envelopes, or cards printed on the top right side in a rectangular box: Postage and Fees Paid (first line); Government Agency Name (second line); and, the proper permit imprint number (G–000) on the third line. These must also bear in the upper left corner in every case the printed return address of the agency concerned above the printed phrases "Official Business" and "Penalty for Private Use, $300." The name and address of a private person or firm shall not be shown.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.242–11 is amended by revising the date of the clause to read "(FEB 1993)"; the introductory text and paragraph (a) of the clause; and removing the derivation line reading "(R7–104.85(b) 1973 APR)" following "(End of clause)" to read as follows:

52.242–11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.

As prescribed in 42.1404–2(b), insert the following clause:

F.O.B. Origin—Government Bills of Lading or Indicia Mail (Feb. 1993)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are mailable, via the U.S. Postal System, using "Penalty Permit Imprint" indicia labels.

* * * * *

[FR Doc. 92–30578 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

[FAC 90–16; FAR Case 90–12; Item XIX]

Federal Acquisition Regulation; Thresholds, FAR Part 45

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule revising sections in FAR subparts 45.1, 45.3, and 45.5 and amending the clause at 52.245–18 to raise or delete outdated dollar thresholds and to clarify existing policy.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 90–12.

SUPPLEMENTARY INFORMATION:

A. Background

Dollar thresholds in FAR part 45 and the clause at FAR 52.245–18 were reviewed for currency, consistency, clarity, and necessity. The approved revisions are intended to balance prudent control and efficient oversight of Government property, while streamlining operations. Giving

consideration to inflation and the resulting increased costs of property, several thresholds were found to be outdated and were raised or removed. The revised thresholds were published in a proposed rule published in the **Federal Register** at 55 FR 32586 on August 9, 1990. The 13 responses received consisted of 10 concurrences with no comment and three comments.

As a result of the comments, FAR 45.506 of the proposed rule has been further revised. The sequence of paragraphs in FAR 45.506 have been revised as follows: Paragraph (a) remains the same, former paragraph (c) becomes the new paragraph (b) with the deletion of the second sentence. Former paragraph (b) is redesignated as paragraph (c). Former paragraph (d) and coverage in former paragraph (c), covering identification of plant equipment and special tooling and special test equipment, respectively, are deleted as the two methods of identification were made uniform under a separate case. Former paragraph (e) is relocated in the new paragraph (c) and a new paragraph (d) is added to describe marking procedures.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it applies either to the internal operating procedures of the Government or generally to large contractors. When this was published as a proposed rule in the **Federal Register** at 55 FR 32586 on August 9, 1990, comments were requested and none were received concerning this issue.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a new information collection requirement concerning OMB Control No. 9000–0075, Thresholds, part 45, is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* for approval. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 45 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 45 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 45—GOVERNMENT PROPERTY

2. Section 45.105 is amended by revising paragrapn (b) to read as follows:

45.105 Records of Government property.

(a) * * *

(b) Contracts may provide for the contracting office to maintain the Government's official Government property records when the contracting office retains contract administration and Government property is furnished to a contractor—(1) for repair or servicing and return to the shipping organization, (2) for use on a Government installation, (3) under a local support service contract, (4) under a contract with a short performance period, or (5) when otherwise determined by the contracting officer to be in the Government's interest.

3. Section 45.106 is amended in paragraph (d) by removing the amount "$50,000" and inserting "$100,000" in its place; and by revising paragraph (e) to read as follows:

45.106 Government property clauses.

* * * * *

(e) When the cost of the item to be repaired does not exceed the small purchase limitation in section 13.000, purchase orders for property repair need not include a Government property clause.

* * * * *

4. Section 45.302–3 is amended by revising paragraph (a); and removing in paragraph (b) the words "(a)(3) above" and inserting "subparagraph (a)(5) of this subsection" in their place to read as follows:

45.302–3 Other contracts.

(a) Facilities may be provided to a contractor under a contract other than a facilities contract when one of the following exceptions applies:

(1) The actual or estimated cumulative acquisition cost of the facilities provided by the contracting activity to the contractor at one plant or general location does not exceed $1,000,000;

(2) The number of items of plant equipment provided is ten or fewer;

(3) The contract performance period is twelve months or less;

(4) The contract is for construction;

(5) The contract is for services and the facilities are to be used in connection with the operation of a Government-owned plant or installation; or

(6) The contract is for work within an establishment or installation operated by the Government.

* * * * *

45.307–2 [Amended]

5. Section 45.307–2 is amended in paragraph (a) by removing the amount "$1,000" and inserting "$5,000" in its place.

6. Section 45.506 is revised to read as follows:

45.506 Identification.

(a) Upon receipt of Government property, the contractor shall promptly—

(1) Identify the property in accordance with agency regulations;

(2) Mark the property in accordance with this section; and

(3) Record the property in its property control records.

(b)(1) Except for the following, all Government property shall be marked with an indication of Government ownership:

(i) Items issued to individuals for use in their work (e.g., protective clothing or tool crib tools) where adequate physical control is maintained over the items.

(ii) Property of a bulk type, or where its general nature of packing or handling precludes adequate marking.

(iii) Material that is commingled, as authorized by 45.507.

(iv) Where the property administrator agrees that marking is impractical.

(2) Exempted items shall be entered and described on the accountable property records.

(c)(1) In addition to marking with an indication of Government ownership, the following property shall be marked with a serial number in accordance with procedures approved by the property administrator:

(i) Special tooling.

(ii) Special test equipment.

(iii) Components of special test equipment that have an acquisition cost of $5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.

(iv) Plant equipment.

(v) Accessory or auxiliary equipment associated with a specific item of plant equipment that is recorded on the property records, if necessary to assure return with the associated basic item.

(2) The contractor shall record assigned numbers on all applicable documents pertaining to the property control system.

(3) If the property is located in a standard agency registration system, the contractor may use the property's registration number as the serial number. The contractor should obtain the registration number through the property administrator from the owning agency.

(d) The markings in paragraphs (b) and (c) of this section shall be—(1) securely affixed to the property, (2) legible, and (3) conspicuous. Examples of appropriate markings are bar coding, decals, and stamping. If marking will damage the property or is otherwise impractical, the contractor shall promptly notify the property administrator and ask for the item to be exempted (see paragraph (b) of this section). Markings shall be removed or obliterated when Government property is sold, scrapped, or donated.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.245–18 [Amended]

7. Section 52.245–18 is amended by removing in the clause heading the date "(AUG 1988)" and inserting "(FEB 1993)" in its place; and removing in paragraph (b) the amounts "$1,000" every time they appear and inserting "$5,000" in their place.

[FR Doc. 92–30579 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 45

RIN 9000–AE13

[FAC 90–16; FAR Case 90–41; Item XX]

Federal Acquisition Regulation; Government Property

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition and Defense Acquisition Regulations Councils have agreed on a final rule amending FAR 45.301 and 45.302–3(c) to clarify the policy regarding fee or profit in the acquisition of general purpose components of special tooling and special test equipment. The prohibition on profit or fee on the cost of facilities when purchased under other than a facilities contract does not apply to general purpose components of special tooling or special test equipment.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 90–41.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule was published for public comment in the **Federal Register** on August 9, 1990 (55 FR 32587). Thirteen comments were received and considered in development of this final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is a clarification of existing Government policy and does not impose burdens on the small business community. None of the comments received addressed the Regulatory Flexibility Act statement published with the proposed rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 45 is amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

45.301 [Amended]

2. Section 45.301 is amended in the definition "Facilities" by removing the last sentence.

3. Section 45.302–3 is amended in paragraph (c) by adding a second sentence to read as follows:

45.302–3 Other contracts.

* * * * *

(c) * * * General purpose components of special tooling or special test equipment are not facilities.

[FR Doc. 92–30580 Filed 12–18–92; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 45

[FAC 90–16; FAR Case 91–74; Item XXI]

Federal Acquisition Regulation; Inventory Schedules, Authority of Contractor's Representative

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule deleting language at FAR 45.606–1(b) which was published in Federal Acquisition Circular 90–4 in the **Federal Register** at 56 FR 15148 on April 15, 1991. The deleted language required that the contractor's inventory schedule certificate be signed by a representative having the authority to commit the contractor in contractual matters.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 91–74.

SUPPLEMENTARY INFORMATION:

A. Background

The language at FAR 45.606–1(b), which was added by FAC 90–4, is removed because of objections from Industry that the rule imposed an undue burden on contractors. Further, the

Defense Contract Management Command's implementation of their Plant Clearance Automated Reutilization Screening System (PCARSS) eliminated hard-copy schedules for contractors under DOD cognizance and will eliminate, through procedures established under PCARSS, the need for which the former language was developed.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule revises to make less burdensome a procedure normally associated with large businesses having Government property in their possession.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 45 is amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.606–1 is amended by revising paragraph (b) to read as follows:

45.606–1 Submission.

* * * * *

(b) The certificate on the inventory schedule must be executed when contractor inventory is reported. The prime contractor shall execute this certificate, except that for subcontractor termination inventory the subcontractor shall execute the certificate.

[FR Doc. 92–30581 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 51

[FAC 90–16; FAR Case 91–55; Item XXII]

Federal Acquisition Regulation; Threshold Change to 51.106(b)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition and Defense Acquisition Regulations Councils have agreed on a final rule amending paragraph (b) of FAR 51.106, Title, which raises the threshold listed therein from $1,000 to $5,000. The revision is consistent with the threshold listed in FAR 52.245–2, Alternate II, and 52.245–5, Alternate I, to which FAR 51.106(b) refers. The revised paragraph will state that if contracts are with educational institutions using the Government Property clause at FAR 52.245–2, Alternate II, or FAR 52.245–5, Alternate I, then title to property having an acquisition cost of less than $5,000 shall vest in the contractor, as provided in the clause. Agencies may provide higher thresholds, if appropriate.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 91–55.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense requested that the threshold referenced in FAR 51.106(b) be raised from $1,000 to $5,000 to be consistent with the threshold listed in FAR 52.245–2, Alternate II, and 52.245–5, Alternate I, to which it refers.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. The case revises paragraph (b) of 51.106, Title, by raising the dollar threshold from "$1,000" to "$5,000" to be consistent with the threshold specified in FAR 52.245–2, Alternate II, and 52.245–5, Alternate I, which it references. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–55), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the change to the FAR does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 51

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 51 is amended as set forth below:

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

1. The authority citation for 48 CFR part 51 continues to read as foll ows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

51.106 [Amended]

2. Section 51.106 is amended in paragraph (b) by removing the amount "$1,000" and inserting "$5,000" in its place.

[FR Doc. 92–30582 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

[FAC 90–16; FAR Case 91–69; Item XXIII]

Federal Acquisition Regulation; Standard Forms 254 and 255, Architect-Engineer Questionnaires

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise Standard Form 254, Architect-Engineer and Related Services Questionnaire, and Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project. The rule deletes the obsolete definition of "Architect-Engineer and related services" on the forms and refers to the definition in FAR part 36. Corresponding changes will be made to the prescriptive language for the forms at FAR 53.236–2(b) and (c).

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–16, FAR Case 91–69.

SUPPLEMENTARY INFORMATION:

A. Background

The changes were determined to be necessary by the two Councils because the definition of "Architect-Engineer and related services" at FAR 36.102 was recently revised and the forms and prescriptive language contain an obsolete definition.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–16, FAR case 91–69), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 53 is amended as set forth below:

PART 53—FORMS

1. The authority citation for 48 CFR part 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 53.236–2 is amended by revising paragraphs (b) and (c) to read as follows:

53.236–2 Architect-engineer services (SF's 252, 254, 255, and 1421).

* * * * *

(b) *SF 254 (REV. 11/92), Architect-Engineer and Related Services Questionnaire.* SF 254 is prescribed for use to obtain information for architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1).

(c) *SF 255 (REV. 11/92), Architect-Engineer and Related Services Questionnaire for Specific Project.* SF 255 is prescribed for use within approved dollar thresholds and as otherwise specified in 36.702(b)(2), whenever an agency requires information to supplement the SF 254 regarding the prospective firm's qualifications for a particular architect-engineer project.

* * * * *

BILLING CODE 6820–34–M

STANDARD FORM (SF) 254

Architect-Engineer and Related Services Questionnaire

Form Approved
OMB No. 9000-0004
Expires 7-31-94

Purpose:

The policy of the Federal Government in acquiring architectural, engineering, and related professional services is to encourage firms lawfully engaged in the practice of those professions to submit annually a statement of qualifications and performance data. Standard Form 254, "Architect-Engineer and Related Services Questionnaire," is provided for that purpose. Interested A-E firms (including new, small, and/or minority firms) should complete and file SF 254's with each Federal agency and with appropriate regional or district offices for which the A-E is qualified to perform services. The agency head for each proposed project shall evaluate these qualification resumes, together with any other performance data on file or requested by the agency, in relation to the proposed project. The SF 254 may be used as a basis for selecting firms for discussions, or for screening firms preliminary to inviting submission of additional information.

Definitions:

"Architect-Engineer Services" are defined in Part 36 of the Federal Acquisition Regulation.

"Parent Company" is that firm, company, corporation, association or conglomerate which is the major stockholder or highest tier owner of the firm completing this questionnaire; i.e., Firm A is owned by Firm B which is, in turn, a subsidiary of Corporation C. The "parent company" of Firm A is Corporation C.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline," as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Consultant," as used in this questionnaire, is a highly specialized individual or firm having significant input and responsibility for certain aspects of a project and possessing unusual or unique capabilities for assuring success of the finished work.

"Prime" refers to that firm which may be coordinating the concerted and complementary inputs of several firms, individuals or related services to produce a completed study or facility. The "prime" would normally be regarded as having full responsibility and liability for quality of performance by itself as well as by subcontractor professionals under its jurisdiction.

"Branch Office" is a satellite, or subsidiary extension, of a headquarters office of a company, regardless of any differences in name or legal structure of such a branch due to local or state laws. "Branch offices" are normally subject to the management decisions, bookkeeping, and policies of the main office.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Type accurate and complete name of submitting firm, its address, and zip code.
   1a. Indicate whether form is being submitted in behalf of a parent firm or a branch office. (Branch office submissions should list only personnel in, and experience of, that office.)
2. Provide date the firm was established under the name shown in question 1.
3. Show date on which form is prepared. All information submitted shall be current and accurate as of this date.
4. Enter type of ownership, or legal structure, of firm (sole proprietor, partnership, corporation, joint venture, etc.).

   Check appropriate boxes indicating if firm is (a) a small business concern; (b) a small business concern owned and operated by socially and economically disadvantaged individuals; and (c) Woman-owned (See 48 CFR 19.101 and 52.219-9).
5. Branches of subsidiaries of large or parent companies, or conglomerates, should insert name and address of highest-tier owner.
   5a. If present firm is the successor to, or outgrowth of, one or more predecessor firms, show name(s) of former entity(ies) and the year(s) of their original establishment.
6. List not more than two principals from submitting firm who may be contacted by the agency receiving this form. (Different principals may be listed on forms going to another agency.) Listed principals must be empowered to speak for the firm on policy and contractual matters.
7. Beginning with the submitting office, list name, location, total number of personnel, and telephone numbers for all associated or branch offices, (including any headquarters or foreign offices) which provide A-E and related services.
   7a. Show total personnel in all offices. (Should be sum of all personnel, all branches.)
8. Show total number of employees, by discipline, in submitting office. (*If form is being submitted by main or headquarters office, firm should list total employees, by discipline, in all offices.) While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines--sociologists, biologists, etc. -- and number of people in each, in blank spaces.

STANDARD FORM (SF) 254

Architect–Engineer and Related Services Questionnaire

9. Using chart (below) insert appropriate index number to indicate range of professional services fees received by submitting firm each calendar year for last five years, most recent year first. Fee summaries should be broken down to reflect the fees received each year for (a) work performed directly for the Federal Government (not including grant and loan projects) or as a sub to other professionals performing work directly for the Federal Government; (b) all other domestic work, U.S. and possessions, including Federally-assisted projects, and (c) all other foreign work.

Ranges of Professional Services Fees

INDEX	INDEX
1. Less than $100,000	5. $1 million to $2 million
2. $100,000 to $250,000	6 $2 million to $5 million
3. $250,000 to $500,000	7. $5 million to $10 million
4. $500,000 to $1 million	8. $10 million or greater

10. Select and enter, in numerical sequence, **not more than thirty** (30) "Experience Profile Code" numbers from the listing (next page) which most accurately reflect submitting firm's demonstrated technical capabilities and project experience. **Carefully review list.** (It is recognized some profile codes may be part of other services or projects contained on list; firms are encouraged to select profile codes which best indicate type and scope of services provided on past projects.) For each code number, show total number of projects and gross fees (in thousands) received for profile projects performed by firm during past few years. If firm has one or more capabilities not included on list, insert same in blank spaces at end of list and show numbers in question 10 on the form. In such cases, the filled-in listing **must** accompany the complete SF 254 when submitted to the Federal agencies.

11. Using the "Experience Profile Code" numbers in the same sequence as entered in item 10, give details of at least one recent (within last five years) representative project for each code number, up to a **maximum** of thirty (30) separate projects, or portions of projects, for which firm was responsible. (Project examples may be used more than once to illustrate different services rendered on the same job. Example: a dining hall may be part of an auditorium or educational facility.) Firms which select less than thirty "profile codes" may list two or more project examples (to illustrate specialization) for each code number so long as total of all project examples does not exceed thirty (30). After each code number in question 11, show: (a) whether firm was "P," the prime professional, or "C," a consultant, or "JV," part of a joint venture on that particular project (new firms, in existence less than five (5) years may use the symbol "IE" to indicate "Individual Experience" as opposed to firm experience); (b) provide name and location of the specific project which typifies firm's (or individual's) performance under that code category; (c) give name and address of the owner of that project (if government agency indicate responsible office); (d) show the estimated construction cost (or other applicable cost) for that portion of the project for which the firm was primarily responsible. (Where no construction was involved, show approximate cost of firm's work); and (e) state year work on that particular project was, or will be, completed.

12. The completed SF 254 should be signed by a principal of the firm, preferably the chief executive officer.

13. Additional data, brochures, photos, etc. should not accompany this form unless specifically requested.

NEW FIRMS (not reorganized or recently-amalgamated firms) are eligible and encouraged to seek work from the Federal Government in connection with performance of projects for which they are qualified. Such firms are encouraged to complete and submit Standard Form 254 to appropriate agencies. Questions on the form dealing with personnel or experience may be answered by citing experience and capabilities of individuals in the firm, based on performance and responsibility while in the employee of others. In so doing, notation of this fact should be made on the form. In question 9, write in "N/A" to indicate "not applicable" for those years prior to firm's organization.

Experience Profile Code Numbers for use with questions 10 and 11

001 Acoustics, Noise Abatement
002 Aerial Photogrammetry
003 Agricultural Development; Grain Storage; Farm Mechanization
004 Air Pollution Control
005 Airports; Navaids; Airport Lighting; Aircraft Fueling
006 Airports; Terminals & Hangars; Freight Handling
007 Arctic Facilities
008 Auditoriums & Theatres
009 Automation; Controls; Instrumentation
010 Barracks; Dormitories
011 Bridges
012 Cemeteries *(Planning & Relocation)*
013 Chemical Processing & Storage
014 Churches; Chapels
015 Codes; Standards; Ordinances
016 Cold Storage; Refrigeration; Fast Freeze
017 Commercial Building *(low rise)*; Shopping Centers
018 Communications Systems; TV; Microwave
019 Computer Facilities; Computer Service
020 Conservation and Resource Management
021 Construction Management
022 Corrosion Control; Cathodic Protection; Electrolysis
023 Cost Estimating
024 Dams *(Concrete; Arch)*
025 Dams *(Earth; Rock)*; Dikes; Levees
026 Desalinization *(Process & Facilities)*
027 Dining Halls; Clubs; Restaurants
028 Ecological & Archeological Investigations
029 Educational Facilities; Classrooms
030 Electronics
031 Elevators; Escalators; People-Movers
032 Energy Conservation; New Energy Sources
033 Environmental Impact Studies, Assessments or Statements
034 Fallout Shelters; Blast-Resistant Design
035 Field Houses; Gyms; Stadiums
036 Fire Protection
037 Fisheries; Fish Ladders
038 Forestry & Forest Products
039 Garages; Vehicle Maintenance Facilities; Parking Decks
040 Gas Systems *(Propane; Natural, Etc.)*
041 Graphic Design
042 Harbors; Jetties; Piers, Ship Terminal Facilities
043 Heating; Ventilating; Air Conditioning
044 Health Systems Planning
045 Highrise; Air-Rights-Type Buildings
046 Highways; Streets; Airfield Paving Parking Lots
047 Historical Preservation
048 Hospital & Medical Facilities
049 Hotels; Models
050 Housing *(Residential, Multi-Family; Apartments; Condominiums)*
051 Hydraulics & Pneumatics
052 Industrial Buildings; Manufacturing Plants
053 Industrial Processes; Quality Control
054 Industrial Waste Treatment
055 Interior Design; Space Planning
056 Irrigation; Drainage
057 Judicial and Courtroom Facilities
058 Laboratories; Medical Research Facilities
059 Landscape Architecture
060 Libraries; Museums; Galleries
061 Lighting *(Interiors; Display; Theatre, Etc.)*
062 Lighting *(Exteriors; Streets; Memorials; Athletic Fields, Etc.)*
063 Materials Handling Systems; Conveyors; Sorters
064 Metallurgy
065 Microclimatology; Tropical Engineering
066 Military Design Standards
067 Mining & Mineralogy
068 Missile Facilities *(Silos; Fuels; Transport)*
069 Modular Systems Design; Pre-Fabricated Structures or Components
070 Naval Architecture; Off-Shore Platforms
071 Nuclear Facilities; Nuclear Shielding
072 Office Buildings; Industrial Parks
073 Oceanographic Engineering
074 Ordnance; Munitions; Special Weapons
075 Petroleum Exploration; Refining
076 Petroleum and Fuel *(Storage and Distribution)*
077 Pipelines *(Cross-Country - Liquid & Gas)*
078 Planning *(Community, Regional, Areawide and State)*
079 Planning *(Site, Installation, and Project)*
080 Plumbing & Piping Design
081 Pneumatic Structures, Air-Support Buildings
082 Postal Facilities
083 Power Generation, Transmission, Distribution
084 Prisons & Correctional Facilities
085 Product, Machine & Equipment Design
086 Radar; Sonar; Radio & Radar Telescopes
087 Railroad; Rapid Transit
088 Recreation Facilities *(Parks, Marinas, Etc.)*
089 Rehabilitation *(Buildings; Structures; Facilities)*
090 Resource Recovery; Recycling
091 Radio Frequency Systems & Shieldings
092 Rivers; Canals; Waterways; Flood Control
093 Safety Engineering; Accident Studies; OSHA Studies
094 Security Systems; Intruder & Smoke Detection
095 Seismic Designs & Studies
096 Sewage Collection, Treatment and Disposal
097 Soils & Geologic Studies; Foundations
098 Solar Energy Utilization
099 Solid Wastes; Incineration; Land Fill
100 Special Environments; Clean Rooms, Etc.
101 Structural Design; Special Structures
102 Surveying; Platting; Mapping; Flood Plain Studies
103 Swimming Pools
104 Storm Water Handling & Facilities
105 Telephone Systems *(Rural; Mobile; Intercom, Etc.)*
106 Testing & Inspection Services
107 Traffic & Transportation Engineering
108 Towers *(Self-Supporting & Guyed Systems)*
109 Tunnels & Subways
110 Urban Renewals; Community Development
111 Utilities *(Gas & Steam)*
112 Value Analysis; Life-Cycle Costing
113 Warehouses & Depots
114 Water Resources; Hydrology; Ground Water
115 Water Supply; Treatment and Distribution
116 Wind Tunnels; Research/Testing Facilities Design
117 Zoning; Land Use Studies
201 _____
202 _____
203 _____
204 _____
205 _____

STANDARD FORM (SF)

254

Architect-Engineer and Related Services Questionnaire

1. Firm Name/Business Address:

2. Year Present Firm Established

3. Date Prepared:

4. Specify type of ownership and check below, if applicable.

- A. Small Business
- B. Small Disadvantaged Business
- C. Woman-owned Business

1a. Submittal is for ☐ Parent Company ☐ Branch or Subsidiary Office

5. Name of Parent Company, if any:

5a. Former Parent Company Name(s), if any, and Year(s) Established:

6. Names of not more than Two Principals to Contact: Title/Telephone

1)

2)

7. Present Offices: City / State / Telephone / No. Personnel Each Office

7a. Total Personnel _____

8. Personnel by Discipline: (List each person only once, by primary function.)

____ Administrative	____ Electrical Engineers	____ Oceanographers	____ _____
____ Architects	____ Estimators	____ Planners: Urban/Regional	____ _____
____ Chemical Engineers	____ Geologists	____ Sanitary Engineers	____ _____
____ Civil Engineers	____ Hydrologists	____ Soils Engineers	____ _____
____ Construction Inspectors	____ Interior Designers	____ Specification Writers	____ _____
____ Draftsmen	____ Landscape Architects	____ Structural Engineers	____ _____
____ Ecologists	____ Mechanical Engineers	____ Surveyors	____ _____
____ Economists	____ Mining Engineers	____ Transportation Engineers	____ _____

9. Summary of Professional Services Fees Received: (Insert index number)

Last 5 Years (most recent year first)

	19____	19____	19____	19____	19____
Direct Federal contract work, including overseas					
All other domestic work					
All other foreign work*					

*Firms interested in foreign work, but without such experience, check here: ☐

Ranges of Professional Services Fees
INDEX
1. Less than $100,000
2. $100,000 to $250,000
3. $250,000 to $500,000
4. $500,000 to $1 million
5. $1 million to $2 million
6. $2 million to $5 million
7. $5 million to $10 million
8. $10 million or greater

10. Profile of Firm's Project Experience, Last 5 Years

Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)
1)			11)			21)		
2)			12)			22)		
3)			13)			23)		
4)			14)			24)		
5)			15)			25)		
6)			16)			26)		
7)			17)			27)		
8)			18)			28)		
9)			19)			29)		
10)			20)			30)		

11. Project Examples, Last 5 Years

Profile Code	"P," "C," "JV," or "IE"	Project Name and Location	Owner Name and Address	Cost of Work (in thousands)	Completion Date (Actual or Estimated)
		1			
		2			
		3			
		4			
		5			
		6			
		7			

8	9	10	11	12	13	14	15	16	17	18	19

STANDARD FORM 254 PAGE 6 (REV. 11-92)

		20			
		21			
		22			
		23			
		24			
		25			
		26			
		27			
		28			
		29			
		30			
12. The foregoing is a statement of facts Signature: _____ Typed Name and Title: _____				Date:	

STANDARD FORM 254 PAGE 67 (REV. 11-92)

STANDARD FORM (SF) 255

Architect-Engineer and Related Services Questionnaire for Specific Project

Form Approved
OMB No. 9000-0005
Expires 7-31-94

Purpose:

This form is a supplement to the "Architect-Engineer and Related Services Questionnaire" (SF 254). Its purpose is to provide additional information regarding the qualifications of interested firms to undertake a specific Federal A-E project. Firms, or branch offices of firms, submitting this form should enclose (or already have on file with the appropriate office of the agency) a current (within the past year) and accurate copy of the SF 254 for that office.

The procurement official responsible for each proposed project may request submission of the SF 255 "Architect-Engineer and Related Services Questionnaire for Specific Project" in accord with applicable civilian and military procurement regulations and shall evaluate such submissions, as well as related information contained on the Standard Form 254, and any other performance data on file with the agency, and shall select firms for subsequent discussions leading to contract award in conformance with Public Law 92-582. This form should only be filed by an architect-engineer or related services firm when requested to do so by the agency or by a public announcement. Responses should be as complete and accurate as possible, contain data relative to the specific project for which you wish to be considered, and should be provided, by the required due date, to the office specified in the request or public announcement.

This form will be used only for the specified project. Do not refer to this submittal in response to other requests or public announcements.

Definitions:

"Architect-Engineer Services" are defined in Part 36 of the Federal Acquisition Regulation.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline," as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Key Persons, Specialists, and Individual Consultants," as used in this questionnaire, refer to individuals who will have major project responsibility or will provide **unusual or unique** capabilities for the project under consideration.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Give name and location of the project for which this form is being submitted.

2. Provide appropriate data from the *Commerce Business Daily* (CBD) identifying the particular project for which this form is being filed.

   2a. Give the date of the *Commerce Business Daily* in which the project announcement appeared, or indicate "not applicable" (N/A) if the source of the announcement is other than the CBD.

   2b. Indicate Agency identification or contract number as provided in the CBD announcement.

3. Show name and address of the individual or firm (or joint venture) which is submitting this form for the project.

   3a. List the name, title, and telephone number of that principal who will serve as the point of contact. Such an individual must be empowered to speak for the firm on policy and contractual matters and should be familiar with the programs and procedures of the agency to which this form is directed.

   3b. Give the address of the specific office which will have responsibility for performing the announced work.

4. Insert the number of consultant personnel by discipline proposed for subject project on line (A). Insert the number of in-house personnel by discipline proposed for subject project on line (B). While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines -- sociologists, biologists, etc. -- and number of people in each, in blank spaces.

5. Answer only if this form is being submitted by a joint venture of two or more collaborating firms. Show the names and addresses of all individuals or organizations expected to be included as part of the joint venture and describe their particular areas of anticipated responsibility (i.e., technical disciplines, administration, financial, sociological, environmental, etc.).

   5a. Indicate, by checking the appropriate box, whether this particular joint venture has worked together on other projects.

Each firm participating in the joint venture should have a Standard Form 254 on file with the contracting office receiving this form. Firms which do not have such forms on file should provide same immediately along with a notation at the top of page 1 of the form regarding their association with this joint venture submittal.

STANDARD FORM (SF) 255

Architect-Engineer and Related Services Questionnaire for Specific Project

Standard Form 255
General Services Administration
Washington, D.C. 20405

6. If respondent is not a joint venture, but intends to use outside (as opposed to in-house or permanently and formally affiliated) consultants or associates, he should provide names and addresses of all such individuals or firms, as well as their particular areas of technical/professional expertise, as it relates to this project. Existence of previous working relationships should be noted. If more than eight outside consultants or associates are anticipated, attach an additional sheet containing requested information.

7. Regardless of whether respondent is a joint venture or an independent firm, provide brief resumes of key personnel expected to participate on this project. Care should be taken to limit resumes to only those personnel and specialists who will have major project responsibilities. Each resume must include: (a) name of each key person and specialist and his or her title, (b) the project assignment or role which that person will be expected to fulfill in connection with this project, (c) the name of the firm or organization, if any, with whom that individual is presently associated, (d) years of relevant experience with present firm and other firms, (e) the highest academic degree achieved and the discipline covered (if more than one highest degree, such as two Ph.D.'s, list both), the year received and the particular technical/professional discipline which that individual will bring to the project, (f) if registered as an architect, engineer, surveyor, etc., show only the field of registration and the year that such registration was first acquired. If registered in several states, do not list states, and (g) a synopsis of experience, training, or other qualities which reflect individual's potential contribution to this project. Include such data as: familiarity with Government or agency procedures, similar type of work performed in the past, management abilities, familiarity with the geographic area, relevant foreign language capabilities, etc. Please limit synopsis of experience to directly relevant information.

8. List up to ten projects which demonstrate the firm's or joint venture's competence to perform work similar to that likely to be required on this project. The more recent such projects, the better. Prime consideration will be given to projects which illustrate respondent's capability for performing work similar to that being sought. Required information must include: (a) name and location of project, (b) brief description of type and extent of services provided for each project (submissions by joint ventures should indicate which member of the joint venture was the prime on that particular project and what role it played), (c) name and address of the owner of that project (if Government agency, indicate responsible office), and name and phone number of individual to contact for reference (preferably the project manager), (d) completion date (actual when available, otherwise estimated), (e) total construction cost of completed project (or where no construction was involved, the approximate cost of your work) and that portion of the cost of the project for which the named firm was/is responsible.

9. List only those projects which the A-E firm or joint venture, or members of the joint venture, are currently performing under direct contract with an agency or department of the Federal Government. Exclude any grant or loan projects being financed by the Federal Government but being performed under contract to other non-Federal Governmental entities. Information provided under each heading is similar to that requested in the preceding Item 8, except for (d) "Percent Complete." Indicate in this item the percentage of A-E work completed upon filing this form.

10. Through narrative discussion, show reason why the firm or joint venture submitting this questionnaire believes it is especially qualified to undertake the project. Information provided should include, but not be limited to, such data as: specialized equipment available for this work, any awards or recognition received by a firm or individuals for similar work, required security clearances, special approaches or concepts developed by the firm relevant to this project, etc. Respondents may say anything they wish in support of their qualifications. When appropriate, respondents may supplement this proposal with graphic material and photographs which best demonstrate design capabilities of the team proposed for this project.

11. Completed forms should be signed by the chief executive officer of the joint venture (thereby attesting to the concurrence and commitment of all members of the joint venture), or by the architect-engineer principal responsible for the conduct of the work in the event it is awarded to the organization submitting this form. Joint ventures selected for subsequent discussions regarding this project must make available a statement of participation signed by a principal of each member of the joint venture. ALL INFORMATION CONTAINED IN THE FORM SHOULD BE CURRENT AND FACTUAL.

STANDARD FORM (SF) **255** Architect-Engineer and Related Services Questionnaire for Specific Project	1. Project Name/Location for which Firm is Filing:	2a. *Commerce Business Daily* Announcement Date, if any:	2b. Agency Identification Number, if any:

3. Firm (or Joint-Venture) Name & Address	3a. Name, Title & Telephone Number of Principal to Contact
	3b. Address of office to perform work, if different from Item 3

4. Personnel by Discipline: (List each person only once, by primary function.) Enter proposed consultant personnel to be utilized on this project on line (A) and In-house personnel on line (B).

(A) (B) Administrative	(A) (B) Electrical Engineers	(A) (B) Oceanographers	(A) (B) _____
(A) (B) Architects	(A) (B) Estimators	(A) (B) Planners: Urban/Regional	(A) (B) _____
(A) (B) Chemical Engineers	(A) (B) Geologists	(A) (B) Sanitary Engineers	(A) (B) _____
(A) (B) Civil Engineers	(A) (B) Hydrologists	(A) (B) Soils Engineers	(A) (B) _____
(A) (B) Construction Inspectors	(A) (B) Interior Designers	(A) (B) Specification Writers	(A) (B) _____
(A) (B) Draftsmen	(A) (B) Landscape Architects	(A) (B) Structural Engineers	(A) (B) _____
(A) (B) Ecologists	(A) (B) Mechanical Engineers	(A) (B) Surveyors	(A) (B) _____
(A) (B) Economists	(A) (B) Mining Engineers	(A) (B) Transportation Engineers	(A) (B) Total Personnel

5. If submittal is by JOINT-VENTURE list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm: (Attach SF 254 for each if not on file with Procuring Office.)

5a. Has this Joint-Venture previously worked together? ☐ Yes ☐ No

6. If respondent is not a joint-venture, list outside key Consultants/Associates anticipated for this project (Attach SF 254 for Consultants/Associates listed, if not already on file with the Contracting Office).

Name & Address	Specialty	Worked with Prime before (Yes or No)
1)		
2)		
3)		
4)		
5)		
6)		
7)		
8)		

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm..... With Other Firms.....	d. Years experience: With This Firm..... With Other Firms.....
e. Education: Degree(s)/Year/Specialization	e. Education: Degree(s)/Year/Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

8. Work by firms or joint-venture members which best illustrates current qualifications relevant to this project (list not more than 10 projects).

a. Project Name & Location	b. Nature of Firm's Responsibility	c. Project Owner's Name & Address and Project Manager's Name & Phone Number	d. Completion Date (actual or estimated)	e. Estimated Cost (In Thousands)	
				Entire Project	Work For Which Firm Was/Is Responsible
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

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9. All work by firms or joint-venture members currently being performed directly for Federal agencies.

a. Project Name & Location	b. Nature of Firm's Responsibility	c. Agency (Responsible Office) Name and Address and Project Manager's Name & Phone Number	d. Percent Complete	e. Estimated Cost (In Thousands)	
				Entire Project	Work For Which Firm Is Responsible

10. Use this space to provide any additional information or description of resources (including any computer design capabilities) supporting your firm's qualifications for the proposed project.

11. The foregoing is a statement of facts.

Signature: _____ Typed Name and Title: _____

Date:

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[FR Doc. 92-30583 Filed 12-18-92; 8:45 am]
BILLING CODE 6820-34-C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15, 19, 31, 33 and 52

[Federal Acquisition Circular 90–16; Item XXIV]

Federal Acquisition Regulation; Technical Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical corrections.

SUMMARY: The following technical corrections have been made to FAR parts 15, 19, 31, 33, and 52 to correct references and terms.

DATES: *Effective Date:* December 21, 1992.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–16; Technical Corrections.

Dated: December 9, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 15, 19, 31, 33, and 52 is amended as set forth in the technical corrections appearing below:

1. The authority citation for 48 CFR parts 15, 19, 31, 33, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

15.804–4 [Amended]

2. Section 15.804–4 is amended in the "Certificate of Current Cost or Pricing Data" following paragraph (a) by adding below the word "Firm", "Signature _____".

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.102 [Technical amendment]

3a. Section 19.102 is amended in the table consisting of the industry size standards in Major Group 37 by removing the size standard "500" for "Motor Vehicle Parts and Accessories" and inserting "750" in its place; and in Major Group 55 by removing the size standard "$11.5" for "Motor Vehicle Dealers (New and Used)" and inserting "$17.0".

3b. In addition to the amendments set forth above, section 19.102 is also amended in footnote number 5 in the "Footnotes" section following the Industry Size Standard Tables by removing the amount "50,000" and inserting "75,000" every time it appears.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–33 [Technical amendment]

4. Section 31.205–33 is amended in paragraph (f) by removing the reference "31.205–38(g)" and inserting "31.205–38(f)" in its place.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.215 [Technical amendment]

5. Section 33.215 is amended by adding "(b)" at the end of the reference "33.203".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.301 [Amendment]

6. Sections 52.301 is amended in the Matrix table at sections 52.214–34 and 52.214–35 by removing from the IBR column the words "No" and inserting "Yes" in their place.

[FR Doc. 92–30584 Filed 12–18–92; 8:45 am]

BILLING CODE 6820–34–M

federal register

Monday
December 21, 1992

Part III

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Americans With Disabilities Act Accessibility Guidelines; State and Local Government Facilities; Proposed Rulemaking

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 92-2]

RIN 3014 AA12

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; State and Local Government Facilities

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board is issuing proposed guidelines to provide additional guidance to the Department of Justice in establishing accessibility standards for new construction and alterations of State and local government facilities covered by title II of the Americans with Disabilities Act (ADA) of 1990. The guidelines will ensure that newly constructed and altered State and local government facilities are readily accessible to and usable by individuals with disabilities in terms of architecture and design, and communication. The standards established by the Department of Justice must be consistent with and may incorporate the guidelines.

DATES: Comments should be received by March 22, 1993. Comments received after this date will be considered to the extent practicable. Where possible, the comments should reference specific sections in the proposed guidelines. The Board will hold public hearings on the proposed guidelines on the dates and times listed under **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Comments should be sent to the Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004-1111. Comments which are six (6) pages or less may be faxed to (202) 272-5447. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m. on regular business days. The Board will hold public hearings on the proposed guidelines at the locations listed under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Stewart, Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004-1111. Telephone (202) 272-5434 (Voice) or (202) 272-5449 (TDD). This is not a toll-free number. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION:

Public Hearings

To ensure broad public input into the rulemaking, the Board has scheduled five hearings around the country to hear from all those affected by the proposed guidelines. The hearings will be held on the following dates and times at the locations listed below:

February 22, 1993—Charlotte, North Carolina, 1 p.m. to 5 p.m., Marriott City Center, 100 West Trade Street.

February 22, 1993—Denver, Colorado, 1 p.m. to 5 p.m., Westin Hotel, Taber Center, 1672 Lawrence Street.

March 2, 1993—St. Louis, Missouri, 1 p.m. to 5 p.m., Marriott Pavilion Hotel, One Broadway.

March 9, 1993—Washington, DC, 1 p.m. to 5 p.m., Sheraton City Center, 1143 New Hampshire Avenue.

March 15, 1993—San Francisco, California, 1 p.m. to 5 p.m., San Francisco Hilton on Hilton Square, One Hilton Square.

Persons who wish to present oral comments on the proposed guidelines may register at the hearing location beginning one hour before the start of the hearings. Persons will be heard in the order in which they register. Oral comments should be concise and limited to five (5) minutes. A written copy of the comments should be submitted for the official record. If more people register to present comments than can be heard in the time scheduled for the hearing, the Board reserves the right to select among those persons who register to ensure that the various interested parties are given an opportunity to speak. The Board is particularly interested in receiving comments on the specific questions identified in the preamble to the proposed guidelines.

All hearing sites are accessible to individuals with disabilities. Sign language interpreters and assistive listening systems will be available for individuals with hearing impairments.

Statutory Background

The Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 *et seq.*) extends to individuals with disabilities comprehensive civil rights protections similar to those provided to persons on the basis of race, sex, national origin, and religion under the Civil Rights Act of 1964.

Title II of the ADA, which became effective on January 26, 1992, prohibits discrimination on the basis of disability in services, programs and activities provided by State and local government entities, and the National Railroad Passenger Corporation (Amtrak). Section 202 of the ADA extends the nondiscrimination policy of section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794) which prohibits discrimination on the basis of disability in federally assisted programs and activities to all State and local governmental entities regardless of whether such entities receive Federal funds. Most programs and activities of State and local governments are recipients of financial assistance from one or more Federal agencies and are already covered by section 504 of the Rehabilitation Act of 1973.

Title III of the ADA, which became effective on January 26, 1992, prohibits discrimination on the basis of disability by private entities who own, lease, lease to, or operate a place of public accommodation. Title III establishes accessibility requirements for new construction and alterations in places of public accommodation and commercial facilities.

Section 504 of the ADA requires that the Architectural and Transportation Barriers Compliance Board (Board) issue minimum guidelines to assist the Department of Justice and the Department of Transportation in establishing accessibility standards under titles II and III. Under sections 204(a) and 306(b) of the ADA, the Department of Justice is responsible for issuing final regulations, consistent with the guidelines issued by the Board, to implement titles II and III (except for transportation vehicles and facilities). Sections 229 and 306(a) of the ADA provide that the Department of Transportation is responsible for issuing regulations to implement the transportation provisions of titles II and III of the ADA. Those regulations must also be consistent with the Board's guidelines.

Rulemaking History

On July 26, 1991, the Board published the Americans with Disabilities Act Accessibility Guidelines (ADAAG) to assist the Department of Justice in establishing accessibility standards for new construction and alterations in places of public accommodation and commercial facilities. See 56 FR 35408, as corrected at FR 38174 (August 12, 1991) and 57 FR 1393 (January 14, 1992), 36 CFR part 1191. ADAAG contains scoping provisions and technical specifications generally

applicable to buildings and facilities (sections 1 through 4.35) and additional requirements specifically applicable to certain types of buildings and facilities covered by title III of the ADA: Restaurants and cafeterias (section 5); medical care facilities (section 6); mercantile and business facilities (section 7); libraries (section 8); and transient lodging (section 9).[1]

On July 26, 1991, the Department of Justice published its final regulations implementing title III of the ADA which incorporated ADAAG as the accessibility standards for newly constructed and altered places of public accommodation and commercial facilities covered by title III. See 56 FR 35544, 28 CFR part 36. On that same date, the Department of Justice published its final regulations implementing title II of the ADA. See 56 FR 35694, 28 CFR part 35. The Department of Justice's title II regulations give State and local governments the option of choosing between designing, constructing or altering their facilities in conformance with the Uniform Federal Accessibility Standards (UFAS)[2] (Appendix A to 41 CFR 101–19.6) or with ADAAG (Appendix A to 28 CFR part 36), except that if ADAAG is chosen, the elevator exemption contained in title III of the ADA does not apply.[3] See 28 CFR 35.151.

When the Board published its notice of proposed rulemaking (NPRM) for ADAAG, State and local governments were informed that the guidelines would, at a later date, apply to State and local government facilities and were encouraged to comment on how the proposed ADAAG would affect those facilities. See 56 FR 2299 (January 26, 1991). Additionally, a number of the questions in the NPRM were directed at issues particularly affecting State and local government facilities. In all, the Board received over 12,000 pages of comments and testimony on the proposed ADAAG from a broad range of interested individuals and groups, as well as from representatives of State and local governments. Comments received pertaining to State and local government facilities are discussed under General Issues below and in Section by Section Analysis.

When the Department of Justice published its title II regulations, it noted that the Board would be supplementing ADAAG in the future to include additional guidelines for State and local government facilities. The Department of Justice further stated that it anticipated that it would amend its title II regulations to adopt ADAAG as the accessibility standards for State and local government facilities after the Board supplemented ADAAG. 56 FR 35694, 35711 (July 26, 1991). Adopting essentially the same accessibility standards for titles II and III of the ADA will ensure consistency and uniformity of design in the public and private sectors throughout the country.

To further the goal of uniform standards, the Board intends to use ADAAG as the accessibility guidelines for Federally financed facilities covered by the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) since the Federal government owns or operates many of the same type of facilities as State and local governments which are addressed in this NPRM. Under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792), the Board is responsible for establishing guidelines for accessibility standards issued by other Federal agencies pursuant to the Architectural Barriers Act of 1968. See note 2 *supra*. The Board anticipates that when this rulemaking is completed, it will initiate action to adopt ADAAG as supplemented for State and local government facilities with special provisions as appropriate for Federal buildings (e.g., post offices, military facilities) in place of its current guidelines for Federally financed facilities. Standards issued by other Federal agencies pursuant to the Architectural Barriers Act must be consistent with the Board's guidelines. Those Federal agencies responsible for issuing accessibility standards under the Architectural Barriers Act will initiate separate rulemaking to adopt standards consistent with ADAAG as supplemented in place of UFAS. Federal agencies, and other interested persons, are encouraged to comment on this NPRM in the context of how the proposed guidelines will also affect Federal facilities and to specify any particular Federal building types which would require special provisions.

Since the Board issued ADAAG in July 1991, additional comments have been received on allowing the use of incised letters on certain signs. This NPRM asks several questions on this issue in order to assist the Board in developing appropriate requirements for State and local government facilities. The Board will also use the information that it receives during this rulemaking to guide it in determining whether to amend other provisions of ADAAG. Therefore the Board strongly encourages individuals and entities concerned about allowing the use of incised letters on certain signs to submit detailed comments to the questions in this NPRM relating to this issue.

General Issues

Alterations

Where substantial alterations occur to a building or facility, UFAS 4.1.6(3) establishes additional requirements for an accessible route, an accessible entrance, and accessible toilet facilities when the total cost of all alterations within any twelve month period amounts to 50 percent or more of the full and fair cash value of the building. ADAAG 4.1.6(2) provides that where alterations affect or could affect usability of or access to an area of a facility containing a primary function, the entity shall make the alteration in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are accessible to the extent that the costs of these accessibility features are not disproportionate to the overall alterations in terms of cost and scope as determined under criteria established by the Attorney General. The Department of Justice's title III regulations provide that alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alterations when the cost exceeds 20 percent of the cost of the alterations to the primary function area. See 28 CFR 36.403(f). The Department of Transportation regulations contain a similar requirement for publicly operated transit facilities. See 49 CFR 37.43.

[1] On September 6, 1991, the Board amended ADAAG to include additional requirements specifically applicable to transportation facilities (section 10). See 56 FR 45500, 36 CFR 1191.1. On that same date, the Board also published separate final guidelines to assist the Department of Transportation in establishing accessibility standards for transportation vehicles. See 56 FR 45530, 36 CFR part 1192. The Department of Transportation has incorporated ADAAG and the Board's guidelines for transportation vehicles and facilities in its final regulations. See 56 FR 45584 (September 6, 1991), 49 CFR parts 37 and 38.

[2] UFAS was developed by the General Services Administration, Department of Defense, Department of Housing and Urban Development, and the United States Postal Service to implement the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) which requires certain Federally financed buildings to be accessible. Most Federal agencies reference UFAS in the accessibility standards for buildings and facilities constructed or altered by recipients of Federal financial assistance for purposes of section 504 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 794).

[3] In new construction and alterations, title III of the ADA does not require elevators if a facility is less than three stories or has less than 3,000 square feet per story, unless the facility is a shopping center or mall; a professional office of a health care provider; or a terminal, depot or other situation used for specified public transportation or an airport terminal. See 28 CFR 36.401(d) and 36.404.

In the NPRM for ADAAG, the Board sought comment on whether the UFAS substantial alterations provision or the ADAAG primary function area provision should be applied to alterations in State and local government facilities. (See 56 FR 2319, January 22, 1991.) The overwhelming majority of comments received in response to this question supported the application of ADAAG 4.1.6(2) to buildings and facilities owned or operated by State and local governments. A few commenters stated that 100 percent accessibility should be the standard without regard to cost. In light of the response received to the question concerning alterations requirements and to make the standards consistent, the Board believes that the primary function area provision of ADAAG 4.1.6(2) should apply to facilities owned or operated by State and local governments and not the substantial alterations provision of UFAS 4.1.3(3).

Exempt Spaces and Structures

ADAAG 4.1.1(5) contains certain exceptions from the requirements for accessibility.

ADAAG 4.1.1(5)(a) provides an exception in new construction based on structural impracticability. Structural impracticability pertains to those rare circumstances when unique characteristics of terrain prevent the incorporation of accessibility features.

ADAAG 4.1.1(5)(b) excepts certain spaces that by their nature and use are not required to be accessible. This exception was provided in response to a question in the initial rulemaking which asked whether there were specific types of spaces which should be exempted from the guidelines. The exception includes: (1) Observation galleries used primarily for security purposes and (2) non-occupiable spaces that are accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators; and frequented only by service personnel for repair purposes.

Exceptions under ADAAG 4.1.1(5) prevail over the other requirements of ADAAG, including those in ADAAG 4.1.1(3) pertaining to work areas. Thus, the requirement that work areas be designed and constructed so that individuals with disabilities can approach, enter and exit the areas, does not apply to an area that is exempt under ADAAG 4.1.1(5).

In addition to the spaces listed in ADAAG 4.1.1(5), some commenters recommended that structures such as air traffic control towers, fire towers, boat traffic and draw bridge towers, fixed life guard stands, lock and dam control stations and toll booths be exempt from the guidelines. Those structures were not addressed in the initial rulemaking because they are generally owned and operated by State and local government entities and are not places of public accommodation or commercial facilities under title III of the ADA. However, as part of this rulemaking for State and local government facilities, the Board is considering adding an exception in ADAAG 4.1.1(5) for those structures where providing access might significantly alter the nature or design of the facility or greatly increase construction cost of the facility. For example, providing vertical access to fire towers might only be accomplished by substantially altering their design. Other structures such as fixed life guard stands, draw bridge towers, and toll booths may have similar constraints. Another example is air traffic control towers which require a 360 degree clear view that cannot be obstructed by an elevator shaft. All of the structures have certain features in common: (1) The nature of the work performed in the structures requires that they be elevated or accessed by tunnels and (2) they are used for fire or rescue assistance, traffic control, or toll collection.

Question 1: Despite these constraints, are there design solutions which would achieve accessibility in any of the following structures: Air traffic control towers, fire towers, boat traffic and draw bridge towers, lock and dam control stations, toll booths, and fixed life guard stands? Where possible, responses should include cost information for such design solutions and, where appropriate, address any health or safety concerns.

Question 2: Should any of the structures listed in Question 1 be exempt from the requirements for accessibility? Are there any other spaces or structures which should be exempt? Responses should include a rationale for exempting the space or structure. What is the cost impact of not providing an exception for the space or structure?

During the initial rulemaking, the Board asked whether certain areas of State and local government facilities should be exempt from the requirement for passenger elevators such as the second floor of a firehouse which contains sleeping accommodations but not office space. Some of the responses to this question recommended that the guidelines include an exemption from accessibility requirements based on the presumed physical abilities of the occupants. Specifically, commenters suggested that areas used only by "able-bodied" personnel should be exempt. Many of these commenters recommended that such an exception be narrowly drawn and include examples, but they did not provide any specific guidance.

Question 3: Are there areas of State or local government facilities where an exemption from the requirement for a passenger elevator is justified based solely on the presumed physical abilities of the occupants? What would be the specific prerequisites for allowing such areas to be exempt? Commenters should give consideration to whether supervisory, maintenance or clerical personnel, visitors, or other persons doing business (e.g., sales representatives), who might have a disability, would need to have access to any of the areas recommended for the exemption. Commenters should also take into consideration if such areas would have a dual purpose which would require them to be accessible to persons with disabilities, (e.g., a conference room or classroom which is also used for public meetings) or whether the occupancy of such areas is likely to change over time.

UFAS allows a military exception from accessibility for "those portions of National Guard facilities which are designed and constructed primarily for use by able-bodied military personnel only." UFAS 4.1.4(2)(b). Commenters should note that the UFAS exception "does not apply to those portions of a building or facility which may be open to the public or which may be used by the public during the conduct of normal business or which may be used by physically handicapped persons employed or seeking employment at such building or facility." UFAS 4.1.4(2)(b). These portions of the building or facility must be accessible.

Question 4: Are there National Guard facilities which were built by or on behalf of a State government, or which are operated by State governments? Should ADAAG include a military exception, similar to the one in UFAS 4.1.4(2)(b), for National Guard facilities? Are there other facilities that are owned or operated by State or local governments where such a military exception should apply? If so, what are these areas and what would be the cost impact of not providing such an exception?

Entrances

Principal or Primary Entrances

ADAAG 4.1.3(8) requires that, at a minimum, 50 percent of all public entrances be accessible. In addition, where provided, one direct entrance to an enclosed parking garage and one

entrance to a pedestrian tunnel or elevated walkway, must be accessible. The provision also states that, "where feasible, accessible entrances shall be those used by the majority of the people visiting or working in the building" (i.e., a principal or primary entrance). State or local governments that receive Federal funds are required by section 504 of the Rehabilitation Act of 1973 to construct all new facilities in accordance with UFAS. UFAS 4.1.2(8) requires at least one principal entrance at each grade floor level to be accessible. UFAS defines a principal entrance as the main door through which most of the people enter.

Thirty State codes and the District of Columbia code require at least one principal or primary entrance to State buildings to be accessible. Many of these States have a specific definition of a principal or primary entrance. For example, the Texas Administrative Code states that: "Principal or Primary entrances—Are building and facility entrances that are recognized by the occupants and visitors as the main points of entry and exit and are used as such." (Texas Administrative Code title 16, section 68.112 (1992)). Therefore, as a result of the operation of both State law and section 504 of the Rehabilitation Act of 1973 as applied to recipients of Federal financial assistance, the majority of State buildings are already subject to the requirement that a principal or primary entrance be constructed in an accessible manner.

Architects and designers have historically recognized the principal entrance of a building as a focal point of its design. Thomas Thiis-Evensen states in his book "Archetypes in Architecture" that:

> The symbolic value of entering and of the entrance is revealed in both the rituals and behavior of most cultures. * * * By comparing the most diverse buildings throughout architectural history we find certain specific motifs which through constant recurrence accentuate the very action of entering. They appear with varying degrees of strength, alone or together, and are found in both monumental and folk architecture. (T. Thiis-Evensen, "Archetypes in Architecture" at 283 (1987)).

Entrances have been visually reinforced by varying their size, shape or ornamentation. American architects have given particular attention to the principal entrances of public government buildings because these buildings represent important principles and values of the democratic system of government. The power behind this system resides in the people and not the leaders. One of the rights that comes with this power is the right to have access to the government and the governmental process. This right of access is reflected in the way architects have designed public government buildings, specifically with respect to the principal entrances of those buildings.

Generally, entrances to public government buildings, particularly those with ceremonial uses, have been made larger and more ornate to draw attention to their importance, their significance and their difference from other buildings in the community. "A large door opening is both generous and public; generous because it lays bare the interior and extends toward the person entering and public because the opening seems calculated for the passage of large crowds or socially important people." (*Id.* at 291). In the case of American architecture, those "socially important people" are the American public. The ability to enter a public government building through the principal entrance carries the symbolic implication of access to the governmental process and may justify the application of a higher standard of accessibility to such buildings with respect to a principal or primary entrance.

In designing entrances to public government buildings, American architects have used various styles and motifs to enhance their importance. The use of monumental stairs to further enhance entrances in order to imply a greater level of importance has been common. Stairs, by their nature, exclude most persons with mobility impairments. However, accessibility and public architecture are not mutually exclusive. There are many good examples of civic architecture with grand entrances which are also accessible (e.g., the Harold Washington Library Center in Chicago, Illinois; the Pleasant Hill City Hall in Pleasant Hill, California). Requiring one principal entrance to be accessible will ensure that accessibility and good design of public buildings will coexist. Another factor to be taken into consideration is building security. Since the principal entrance is the one most used by the public, most of the security and information services of the building are focused there. If this entrance is also accessible, the job of maintaining security and providing information is easier.

Question 5: The Board is considering several options for requiring accessible entrances in legislative, judicial, and regulatory facilities which are owned or operated by State and local governments. These options include:

Option 1: Retaining the requirements in ADAAG 4.1.3(8) as written without additional requirements for principal or primary entrances;

Option 2: Specifying that at least one principal or primary entrance must be among those entrances required to be accessible by ADAAG 4.1.3(8);

Option 3: Requiring at least one principal or primary entrance to be accessible in addition to the number of entrances required to be accessible by ADAAG 4.1.3(8) (assuming that the entrances which are being made accessible under ADAAG 4.1.3(8) are not principal or primary entrances);

Option 4: Requiring 50 percent of the principal or primary entrances to be accessible and allowing those principal or primary entrances to be counted towards satisfying the requirements of ADAAG 4.1.3(8);

Option 5: Requiring 50 percent of principal or primary entrances to be accessible in addition to the number of entrances required to be accessible by ADAAG 4.1.3(8) (assuming that the entrances which are being made accessible under ADAAG 4.1.3(8) are not principal or primary entrances);

Option 6: Requiring all principal or primary entrances to be accessible and allowing those principal or primary entrances to be counted towards satisfying the requirements of ADAAG 4.1.3(8);

Option 7: Requiring all principal or primary entrances to be accessible in addition to the number of entrances required to be accessible under ADAAG 4.1.3(8), (assuming that the entrances which are being made accessible under ADAAG 4.1.3(8) are not principal or primary entrances); and

Option 8: Requiring that all entrances be accessible.

The Board seeks comments on each of these options. Commenters should state the preference and justification for a particular option and, where possible, should include information concerning the costs associated with such a requirement. Are there State and local government buildings, other than legislative, judicial, and regulatory, which should be included in this requirement? The Board also seeks information about how local codes (e.g., county and municipal) address the accessibility of entrances to local government buildings and facilities.

Restricted and Secured Entrances

In proposed ADAAG 11.5 (Judicial, Legislative and Regulatory Facilities) at least one restricted entrance and at least one secured entrance in judicial, legislative and regulatory facilities must be accessible. Proposed ADAAG 11.5

defines a restricted entrance as one used by judges, court personnel and other parties on a controlled basis. Secured entrances are used by detainees and detention officers. Additionally, under proposed ADAAG 11.5, if direct access is provided for pedestrians from an enclosed parking garage to a restricted entrance, at least one direct entrance from the garage to the restricted entrance must be accessible.

In proposed ADAAG 12.2 (Detention and Correctional Facilities), at least one secured entrance in detention and correctional facilities must be accessible. A secured entrance is one which is used only by detainees, inmates and security personnel.

Question 6: These proposed requirements for restricted and secured entrances are in addition to ADAAG4.1.3(8). The Board seeks comments on whether there may be other types of State and local government facilities which may also have restricted and secured entrances. If so, should the guidelines require that one or more of the restricted or secured entrances in those facilities be accessible? The Board also seeks information on the cost impact of the requirements for accessible restricted and secured entrances in proposed ADAAG 11.5 and 12.2 and of requirements for accessible restricted and secured entrances in other types of State and local government facilities.

Distribution or Location of Accessible Entrances

Some government buildings such as legislative and judicial facilities are very large and may occupy an entire city block. Although ADAAG 4.1.3(8)(a)(i) requires at least 50 percent of entrances to be accessible and an accessible route to connect them with parking, transportation stops, and the public way or sidewalk on the site, accessible entrances may not always be the closest entrance to these elements.

Question 7: Should the guidelines include a distribution requirement for accessible entrances? If so, should such a provision require that an accessible entrance be located on each side of a building where entrances are provided? Such a requirement would help facilitate incorporating accessibility in any future development on the site. For example, a new government office building may be constructed adjacent to unimproved property. If the adjacent property is improved at a later date to include a new parking structure, or bus stop, a convenient accessible entrance would already be provided. Another option would be to require accessible entrances to be in close proximity to certain areas such as elevators, information centers (e.g., building directories), accessible parking and passenger loading zones, transportation stops, public streets or sidewalks. Should a distribution requirement apply only to buildings above a certain size, and, if so, what criteria should be followed to identify the minimum size of a facility? Finally, should the distribution requirement apply only to certain types of buildings or facilities, such as judicial, legislative, regulatory, and detention and correctional facilities, or should it apply to all types of facilities owned or operated by State and local governments? What additional cost, if any, would be associated with such a requirement?

Automatic Door Openers

ADAAG does not specify a maximum opening force for exterior hinged doors. ANSI A117.1—1986 limits the opening force of such doors to 8.5 pounds-force (lbf). See ANSI A117.1 1986, section 4.13.11(2)(a). This maximum opening force was not included in ADAAG because of the many factors which affect the opening and closing force required at exterior doors (e.g., wind pressure, weight of door, heating and ventilation systems, and positive or negative pressure within a building). These factors can make it difficult for an individual with a disability to operate exterior doors. The Board, however, believes that a provision for an automatic or power operated door may resolve the difficulties created by these factors. An automatic or power operated door will also provide accessibility to persons who have difficulty in opening, or who cannot open, a door manually. There are currently many types of automatic and power operated doors available in a range of costs. The Board is currently sponsoring research aimed at obtaining data about automatic doors and accessibility issues. This research is intended to identify, among other things, (1) the need and appropriateness for automated doors in various building and facility types in new construction, alterations to existing facilities, and alterations to historic buildings; (2) the technical issues of opening force and maneuvering space related to automated doors; (3) the types of automated doors and operating controls; and (4) the advantages, disadvantages and costs associated with each automated door system. Although research is being conducted, the Board believes that the current body of information, including industry standards, is sufficient to establish a performance standard that enables independent operation by persons with disabilities. This would be similar to the performance standard used in ADAAG 4.34.4 (Automated Teller Machines) which provides that instructions and information for use of automated teller machines shall be made accessible to and be independently usable by persons with vision impairments.

The Board may consider adding a provision to ADAAG which requires that an automatic or power operated door be located in at least one accessible entrance in all State and local government facilities.

Question 8: Should automatic or power operated doors be required at entrances to State and local government facilities? If so, should this provision be limited to specific types of State and local government facilities? What would be the justification for limiting the requirements to certain types of State and local government facilities? Information is also sought about alternative methods of providing accessibility at exterior doors (e.g., balanced doors, accessible revolving doors, etc.), including cost information about exterior door accessibility and cost data on heating and cooling loss related to automatic and power operated door timing requirements. The Board also requests comments on appropriate power operated door activating mechanisms (i.e., pressure and motion sensors versus manual activating mechanisms, such as push plates). If manual activating mechanisms are used with a power operated door, should that mechanism (button, push plate, or other method) be required to be a certain size? Should the mechanism be located at 42 inches (1065 mm) above the finished floor similar to the requirement for elevator call buttons in ADAAG 4.10.3? Since automatic and power operated doors must be operated manually during a power failure or malfunction, should they be required to meet ADAAG 4.13.6 (Maneuvering Clearances at Doors) or should they only be required to have a specific maximum opening force when they must be opened manually? What should this maximum opening force be?

Building Signage

The Department of Justice title II regulations require State and local governments to ensure that persons with visual impairments can obtain information about the existence and location of accessible services, activities and facilities. See 28 CFR 35.163(a). Such information is normally obtained through the use of building directories and other temporary signs. ADAAG 4.1.3.(16) (Building Signage), however, exempts these types of signs from accessibility requirements. Building

directories usually cannot comply with ADAAG 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs) because the minimum character height requirement would make the directories too large to be practical. Furthermore, ADAAG 4.30.6 (Mounting Height and Location) would require the information to be compressed into a small, specified area. One solution to this problem may be to provide alternative means of communication, such as a building directory with a telephone handset that connects to an information desk.

Question 9: Should the guidelines include provisions for tactile or audible directories, audible signs or other wayfinding devices for State and local government buildings in order to provide for the needs of persons with visual impairments? Should these requirements be restricted to specific State and local government building types? The Board seeks information about technologies that are currently available which would provide persons with visual impairments information about services, activities and facilities of State and local government buildings. Information is also sought about the cost, availability and reliability of such technologies.

Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)

ADAAG 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)) requires that letters and numerals shall be raised 1/32 inch, upper case, sans serif or simple serif type, and accompanied with Grade 2 Braille. This provision is based on ANSI A117.1–1986, section 4.28.4. ANSI A117.1–1980, section 4.28.4 originally provided that tactile letters on signs were permitted to be either raised or incised. In 1986, the ANSI provision was revised so that tactile letters were required to be raised and, in 1989, this revision was incorporated in the Board's Minimum Guidelines and Requirements for Accessible Design (MGRAD). See 36 CFR 1190.40.[4]

Additionally, a Board sponsored research project report, "A Multidisciplinary Assessment of the State of the Art of Signage for Blind and Low Vision Persons" (September 1985), concluded:

> All tactile signage should use raised rather than incised (indented) characters. For example, for upper case Helvetica Medium type, incised characters produced average success rates from 10–18% lower than those of raised characters. In addition almost every subject had every strong negative comments regarding the use of incised signage. (at 47).

Copies of this research report are available from the National Technical Information System, Springfield, Virginia.

Section 504 of the ADA provides that the Board supplement the existing MGRAD for purposes of titles II and III of the ADA. The legislative history further explains: "In no event shall the minimum guidelines issued under this legislation reduce, weaken, narrow, or set less accessibility standards than those included in the existing MGRAD." H. Rept. 101–485, pt. 2, at 139. Consequently, the Board did not deviate from MGRAD by including a technical provision for incised letters in ADAAG 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)).

Following the adoption of ADAAG, the Board heard from representatives of the engraving industry regarding the requirement for raised letters in ADAAG 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)). The engraving industry representatives question the advisability of restricting tactile signs to raised letters and believe that incised letters can be designed so as to be readable by persons with vision impairments. Secondly, engraving industry representatives claim that not allowing incised letters has had a disproportionate impact on those companies that cannot convert to technologies which produce raised lettering.

Question 10: The Board is interested in consumers' experiences with both raised and incised letters on tactile signs. Specifically, is one type generally more readable than the other? Comments regarding individual preferences are welcome. If available, supporting data including research on success rates (readability) and factors influencing success is also requested.

Section 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)) of ANSI A117.1–1980 required that incised letters must be sans serif, a minimum of 1/32 inch incised, and have a stroke width of at least 1/4 inch. A minimum height of 5/8 inches is required only for raised letters.

Question 11: If incised tactile signs are permitted, is the ANSI A117.1–1980 specification sufficient to ensure readability? If not, what minimum specifications for depth of lettering, stroke width, height of characters and typeface is recommended for such signs? Commenters are asked to provide supporting data or research, where possible. The terms incised and indented have been used to describe this type of signage lettering. The Board seeks information on industry standards for these terms. Are they interchangeable or are they distinct from one another?

As discussed earlier, ADAAG 4.30.4 (Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms)) does not permit incised letters on signs that are required to be tactile. ADAAG 4.1.2(7) and 4.1.3(16) require only those building signs that identify permanent rooms and spaces to be tactile. Informational and directional signs as well as temporary signs, including personal name plaques, building directories, menus, and company logos are not required to be tactile and these could use incised letters. Considering that not all signs must be tactile, the Board seeks information regarding the financial impact of the requirement for certain signs to have raised tactile lettering.

Question 12: What percentage of engraving businesses primarily manufacture building signage? Of these, how many have already acquired or have been unable to acquire technologies that enable them to produce raised tactile signs? What is the cost and availability of such technologies? What sort of training is required for businesses to convert to these technologies? The Board seeks information on the cost of producing and maintaining raised letter tactile signs as compared to producing and maintaining incised tactile signs.

The Department of Justice has issued a technical assistance letter stating that the only signs subject to the tactile sign requirements of ADAAG 4.1.3(16)(a) are men's and women's rooms (including locker rooms and dressing rooms if they contain men's or women's restrooms), room numbers, and exit signs. In light of this interpretation, the Board is considering including an additional requirement for tactile signs in State and local government facilities. Under consideration are signs which provide information about the function, or use of a room or space, such as "Courtroom", "Council Chambers", "Classroom", "Auditorium", "Accounting Department" and other identifying signs provided at the entrance to a room or space. If such a provision is added, such signs would be required to comply with

[4] Also in 1989, the General Services Administration amended UFAS by deleting the words "indented" and "incised" where they appear in UFAS 4.30.4 which resulted in requiring tactile letters to be raised. See 41 CFR 101–19.6. This change was consistent with the ANSI A117.1–1986 provision. It should be noted that the other three standard setting agencies (the Department of Defense, the Department of Housing and Urban Development, and the U.S. Postal Service) did not make similar amendments with respect to section 4.30.4 of UFAS.

ADAAG 4.30.4 (Raised and Brailled Characters and Symbol Signs (Pictograms)), 4.30.5 (Finish and Contrast), and 4.30.6 (Mounting Location and Height).

Question 13: Should State and local government facilities be required to provide tactile signs when such signs provide information about the function or use of a room or space? If so, which informational signs should be included in this provision?

Audible Announcements and Effective Communication for Persons With Hearing Impairments

ADAAG 10.3.1(14) and 10.4.1(6) (Transit Facilities) require that when transportation facilities provide information through a public address system, equivalent information be provided to persons who are deaf or hearing-impaired. The Board is considering a requirement similar to this for State and local government facilities which also provide audible announcements to the public. For example, some courthouses use public address systems in calling cases to come before the court. Correctional facilities use public address systems to control prisoners and detainees.

Question 14: The Board seeks information on what other State and local government building types or facilities typically provide audible announcements to the public and what alternative means (such as visual paging systems, using video monitors, and computer technology) are available for providing this information to persons who are deaf or hearing-impaired. The Board is interested in cost data about such systems if available.

Assistive Listening Systems

ADAAG 4.1.3(19)(b) (Assembly Areas) requires permanently installed assistive listening systems to be provided where audible communications are integral to the use of an assembly area, if the assembly area (1) accommodates at least 50 persons or has an audio-amplification system and (2) has fixed seating. Proposed ADAAG 11.9 would require that permanently installed assistive listening systems be provided in judicial, legislative and regulatory facilities based on the type of room in lieu of criteria in ADAAG 4.1.3(19)(b).

Question 15: Are there additional types of State and local government facilities where the scoping requirements for permanently installed assistive listening systems should be based on the facility or occupancy type in lieu of criteria in ADAAG 4.1.3(19)(b)?

Certain areas or spaces in State or local government facilities may need to be secure from electronic eavesdropping. Conference rooms, hearing rooms, and courtrooms are examples. Some assistive listening systems may be incompatible with electronic security.

Question 16: Are there areas or spaces in State or local government facilities which may require protection from electronic eavesdropping? What are the technical options for solving these security-related problems with respect to certain assistive listening systems? Is one type of system more secure than another? What are the costs involved in providing a secure assistive listening system? Is it appropriate to exempt such areas from the requirement of an assistive listening system?

Assembly Areas

During the initial rulemaking, the Board requested information on lines of sight at seating locations for persons who use wheelchairs. See 56 FR 2296 (January 22, 1991). The Board received a number of comments which recommended that ADAAG 4.33 (Assembly Areas) be expanded to address other issues such as companion seating, integration and dispersal, and transfer seating. An overwhelming majority of responses favored including a provision requiring lines of sight over standing spectators in sports arenas and other similar assembly areas. A few commenters opposed such a provision because it would be either unenforceable, add significant cost or reduce seating capacity. Some commenters felt that an entry level or front row seating location was acceptable if companion seating was available for more than one person.

After careful review of comments and of State accessibility codes and standards, the Board modified the scoping provisions in the final ADAAG for wheelchair seating, added requirements for transfer seats and companion seating, and clarified the dispersal requirement. See 56 FR 35408 (July 26, 1991). Additionally, the Board felt it was essential to conduct further research on assembly areas with respect to other recommendations received in response to the rulemaking. The Board is currently sponsoring a research project on accessibility in assembly areas which will provide additional information for future revisions of ADAAG. The Board intends to address the issue of lines of sight over standing spectators in the guidelines for recreational facilities which will be proposed at a future date.

Question 17: The Board is seeking comments on the design issues associated with providing integrated and dispersed accessible seating locations with a clear line of sight over standing spectators in arenas, stadiums or other sports facilities. Clearly, not all seats in sports facilities afford clear lines of sight over standing spectators. Tall persons, guard railings or other fixed elements in the facility may block one's view of the playing field. However, since persons with disabilities have fewer choices of seating locations, should all the accessible seating locations be required to have lines of sight over standing spectators? Would such a requirement compromise the requirement for dispersed wheelchair seating by providing seating in fewer locations? If maximum dispersal of accessible seating locations is provided, what percentage of such locations can be provided with a clear line of sight over standing spectators? The Board encourages commenters to provide cost information and examples (including drawings, pictures or slides) of sports facilities where the accessible seating locations are dispersed, integrated and provide clear lines of sight over standing spectators. Additionally, the Board is seeking comments on how the dispersal requirement is achieved in arenas or stadiums where fixed seating is on different levels within a tier having steps. How should dispersal be defined in such facilities? If the same definition of dispersal cannot be applied to all types of facilities, is there a way to categorize different facilities and apply a specific dispersal requirement to each category? What are the design issues associated with providing accessible seating locations within one tier on different levels?

Other Issues

Swimming Pools

During the initial rulemaking, the Board sought information on whether swimming pools should provide more than one means of water access, since not all means of providing access are equally useful. While there were few responses to this question, the majority of the comments received stated that more than one means of water access should be provided. A few commenters stated that if more than one pool was located on a site, differing means of access would be appropriate.

The Board is considering developing a guideline that would require access to the water for persons with disabilities in swimming pools owned or operated by State or local governments. There are various means of providing access to the

water for persons with disabilities. These may include raised pool edge copings with grab bars, wheelchair ramps, slides, stairs with raised transfer platforms, wide treads and low risers, pool lifts (hydraulic, pneumatic or electric), zero grade entry and movable pool floors.

Question 18: Should the Board develop guidelines that require access to the water in swimming pools owned or operated by State and local governments? Given the wide range of types of disabilities which need to be accommodated, is there one means of access what would be usable by all or a majority of persons with disabilities? If not, should more than one means of access be provided? What are ways, other than those listed above, which could provide access to pools to persons with disabilities? Where possible, commenters should include information regarding independent operation versus operation by a pool attendant, as well as cost and maintenance information.

Polling Places, Voting Booths, and Equipment

The Board recognizes that, in most cases, voting booths and equipment are portable in nature and therefore may not come under the jurisdiction of these guidelines. However, to the extent that a State or local government building which houses a polling booth or equipment is considered new construction or an alteration, that facility is covered by the accessibility requirements of ADAAG. Furthermore, polling places which are located in buildings or facilities which are owned or operated by State or local governments are covered by the Department of Justice's regulations implementing title II of the ADA which provide that individuals with disabilities shall not be excluded from participation in, or be denied the benefits of services, programs, or activities of a public entity. See 28 CFR 35.149.

The Board is proposing to issue advisory guidelines for voting booths and equipment in the form of a Technical Assistance Bulletin.

Question 19: The Board is seeking information regarding new and existing technologies which would facilitate the independent use of voting equipment and booths by persons with disabilities. The Board is particularly interested in technologies that would meet the needs of persons with visual impairments, reach range limitations, and limitations in manipulating or operating controls in voting booths. What are the costs that would be associated with technologies? Commenters should bear in mind that those technologies recommended must maintain the confidentiality of the voting process.

Question 20: Are there polling places controlled by State or local governments which utilize fixed voting booths and devices? How do these fixed voting booths and devices currently meet the access needs of persons with visual impairments, reach range limitations, and limitations in manipulating or operating controls?

Section-by-Section Analysis

This section of the preamble contains a concise summary of the changes and additions which the Board is proposing to ADAAG.

1. Purpose

The Board is proposing additional special application sections to ADAAG and anticipates that more sections will be added in the future. Accordingly, the Board proposes to amend the purpose section to delete the reference to specific special application sections currently in ADAAG and replace it with a general reference to special application sections.

3. Miscellaneous Instructions and Definitions

3.5 Definitions

A reference to the location of the definitions for "Continuous Passage", "Public Improvement Project", "Sidewalk", and "Site Infeasibility" was added to this section. These definitions pertain to proposed ADAAG 14 (Public Rights of Way) and are located in that section.

The definition of "alteration" has been revised to include a specific reference to State and local government entities.

The existing ADAAG definition of "dwelling unit" includes references to facilities used on a transient basis, such as group homes, shelters, and hotel guestrooms providing both sleeping accommodations and food preparation areas. ADAAG 9 (Accessible Transient Lodging) addresses these types of facilities but does not contain the term "dwelling unit." Since this term appears only in proposed ADAAG 13 (Accessible Residential Housing), the definition of "dwelling unit" has been removed from ADAAG 3.5 (Definitions) and placed in proposed ADAAG 13 and was revised to reflect a more limited application to that section. To assist readers, a reference to the location of the term "Dwelling Unit" is inserted in ADAAG 3.5 (Dwelling Unit).

The definition of "transient lodging" has been modified by removing the term "dwelling unit," which is used in ADAAG only in reference to residential facilities covered by proposed ADAAG 13 (Accessible Residential Housing). Further, the change clarifies that "transient lodging" applies to facilities used on a transient basis and not to residential facilities.

4. Accessible Elements and Spaces: Scope and Technical Requirements

4.1 Minimum Requirements

4.1.1 Application

Specific references in ADAAG 4.1.1(1) to the scoping requirements for accessible sites and exterior facilities (4.1.2), newly constructed buildings (4.1.3), and alterations (4.1.6) have been deleted. This modification does not change the substance of this provision but merely removes unnecessary references for clarity.

The Board is proposing additional special application sections to ADAAG and anticipates that more sections will be added in the future. Accordingly, ADAAG 4.1.1(2) is amended to delete the reference to specific special application sections currently in ADAAG.

4.1.3 Accessible Buildings: New Construction

4.1.3(5) Exception 1 Elevators

Section 303(b) of the ADA provides that an elevator shall not be required in facilities that are less than three stories or have less than 3,000 square feet per story, unless the building is a shopping center or mall, the professional office of a health care provider, or another type of facility as determined by the Attorney General. ADAAG 4.1.3(5) Exception 1 applies only to places of public accommodation and commercial facilities subject to title III of the ADA and not to State or local government facilities covered by title II of the ADA. The Board has clarified this distinction by adding a specific reference to places of public accommodation and commercial facilities in the exception.

4.1.3(17)(c) Public Telephones—Text telephones

ADAAG 4.1.3(17)(c) provides scoping requirements for text telephones in new construction. When ADAAG was published on July 26, 1991, the Board noted in the preamble that scoping provisions for State and local government buildings would be incorporated into this section at a later date (56 FR 35424). ADAAG 4.1.3(17)(c)(1) currently requires that buildings or facilities with four or more public pay telephones (at least one of which is located in an interior location) must have at least one interior public

text telephone. ADAAG 4.1.3(17)(c) (2) and (3) and also contain additional requirements for certain types of facilities, including stadiums, arenas, convention centers, and hospitals. These facilities are required to have an interior public text telephone if an interior public pay telephone is provided. The Board is proposing a similar requirement for State and local government buildings subject to proposed ADAAG 11 (Judicial, Legislative, and Regulatory Facilities) and 12 (Detention and Correctional Facilities). Based on responses to questions (21) through (24) below, the Board may: (1) Increase the existing scoping requirements for public text telephones as they apply to public entities or (2) include other types of State and local government facilities in this scoping section as part of the final rulemaking.

Under proposed ADAAG 4.1.3(17)(c)(iv), at least one interior public text telephone must be provided in judicial, legislative, and regulatory facilities if an interior public pay telephone is provided. Proposed ADAAG 4.1.3(17)(c)(v) addresses detention and correctional facilities and requires at least one interior public text telephone in the public areas of these facilities if an interior public pay telephone is provided. Further, if a public pay telephone is provided in the secured areas of these facilities, then at least one public text telephone is required in a secured area of the facility. A text telephone is not required in every secured area with a public pay telephone, but in just one secured area of the facility. Since detainees or inmates are limited to the secured areas of these facilities, this requirement ensures equal access to telecommunication for those inmates or detainees with hearing impairments.

Question 21: Are proposed ADAAG 4.1.3(17)(c) (iv) and (v) adequate to address the need for public text telephones in judicial, legislative, and regulatory facilities and detention and correctional facilities? For example, in prisons where inmates are separated and housed in areas with different levels of security, would the provision of one public text telephone ensure accessible telecommunication to the inmates from different housing areas? The Board also requests information on the cost impact of these requirements on the design and construction of these types of facilities.

In view of concerns about vandalism to permanently installed public text telephones, the Board notes that ADAAG 4.31.9 (Text Telephones Required by 4.1), which contains the technical requirements for text telephones, includes a provision for equivalent facilitation. This provision allows use of portable devices in lieu of permanently installed public text telephones if the portable device is readily available to users. For example, a portable text telephone could be used in the secured area of a prison instead of a permanently installed public text telephone as long as it was conveniently available during the times at which inmates are allowed use of public telephones.

ADAAG 4.1.3(17)(d) requires that interior phone banks with three or more public pay telephones must have at least one phone that is equipped with a shelf and electrical outlet for use of a portable text telephone. However, since outlets may be a security hazard in the secured areas of detention and correctional facilities, the Board has exempted these areas from this requirement.

ADAAG 4.1.3(17)(c) (ii) and (iii) (Public Telephones) currently requires the provision of one text telephone when an interior public pay telephone is provided in the following locations: A stadium or arena, a convention center, a hotel with a convention center, a covered mall, or the area serving a hospital emergency room, a hospital recovery room or a hospital waiting room.

Question 22: Are the existing requirements in ADAAG 4.1.3(17)(c) (ii) and (iii) sufficient with respect to these building occupancies owned or operated by State or local government entities? Comments suggesting an alternative scoping requirement should include a justification and, if possible, estimates of any additional associated cost.

Question 23: Are there other specific State and local government building types which should be required to have a public text telephone if an interior public pay telephone is provided? Should all State and local government facilities be required to provide a public text telephone if an interior public pay telephone is provided?

Question 24: ADAAG 4.1.3(17)(c) (ii) and (iii) currently require only one public text telephone regardless of building size. Should the scoping for public text telephones take into account the size of buildings or facilities? If so, how should the requirement be delineated?

4.1.6 Accessible Buildings: Alterations

4.1.6(1)(k) Elevator Exception

As discussed under ADAAG 4.1.3(5) Exception 1 above, this section has been revised to reflect the limited application of the elevator exception to places of public accommodation or commercial facilities.

4.1.7 Accessible Buildings: Historic Preservation

4.1.7(1)(a) Exception

During the initial rulemaking, the Board received comments recommending that an exception be established under ADAAG 4.1.7(1)(a) for a small group of historic properties such as a historic house museum that has only one entrance and where modifying the doorway or cutting out a window to create an accessible entrance would destroy the characteristics that qualify the building as an historic property. The Board stated that it would consult with the National Park Service and Advisory Council on Historic Preservation on this issue and propose an exception in the next phase of rulemaking. 56 FR 35430 (July 26, 1991). An exception was reserved under ADAAG 4.1.7(1)(a) for this purpose.

When the Department of Justice issued its final regulations for titles II and III of the ADA, it included sections in each of those regulations on alterations to historic properties which permitted alternative methods of access to be provided (e.g., using audio-visual materials and devices to depict portions of an historic property that cannot otherwise be made accessible) where providing physical access would threaten or destroy the historic significance of a building or facility. See 28 CFR 35.151(d)(2) and 28 CFR 36.405(b). In effect, the Department of Justice regulations have created an exception. The Board proposes to incorporate this exception in ADAAG 4.1.7(1)(a). The Department of Justice regulations for title III of the ADA provide that the exception may only be used if the procedures in ADAAG 4.1.7(2) are followed which require the State Historic Preservation Officer and, in certain cases the Advisory Council on Historic Preservation, to be consulted. The State Historic Preservation Officer and, where applicable the Advisory Council on Historic Preservation, are responsible for determining whether complying with ADAAG will threaten or destroy the characteristics that qualify a building as an historic property and whether physical access can be achieved using the alternative minimum requirements for historic preservation in ADAAG 4.1.7(3). Historic properties covered by title II of the ADA should be treated in the same manner as historic properties under title III of the ADA and the exception made

subject to following the consultation procedures in ADAAG 4.1.7(3).

7.2 Sales and Service Counters, Teller Windows, Information Counters

ADAAG 7 (Business and Mercantile) contains requirements for sales and service counters, teller windows, and information counters (7.2); check-out aisles (7.3); and security bollards (7.4). These requirements are applied to "the design of all areas used for business transactions with the public" and apply to business and mercantile facilities. State and local government buildings and facilities may also be equipped with service and information counters and teller windows. However, as currently written, ADAAG 7.2 makes reference to places of public accommodation such as department stores and hotels. Consequently, the Board has proposed an additional provision which specifically applies to State and local government buildings and facilities as well. This new section found at ADAAG 7.2(3) and replaces an existing reserved requirement for assistive listening devices which is renumbered ADAAG 7.2(4).

The Board considers access to service counters and windows in State and local government facilities to be particularly critical for several reasons. First, State and local government entities provide a variety of services that may only be received by individuals appearing in person. For example, application for a driver's license or for certain benefits, such as unemployment, usually must be completed in person with proper forms of identification. Second, State or local laws and regulations may actually obligate a person to receive certain services or complete various transactions in person, such as registration of a firearm. Third, these services are often provided at designated locations, such as courthouses, police stations, or social service agencies. Members of the public usually have less choice in where they may go to receive government services than they do in receiving services from public accommodations. In some cases, there may be only one location or building in a geographic area where government services are provided. For example, a county courthouse may be the only location for receiving certain county permits. These factors underscore the need for both mobility access and communication access at these types of service counters and windows.

Proposed ADAAG 7.2(3)(i) clarifies that the existing requirements in ADAAG 7.2(1) for counters with cash registers apply to the same type of counters provided in State or local government facilities. ADAAG 7.2(1) requires at least one of each type of counters with cash registers to have a portion at least 36 inches in length with a maximum height of 36 inches.

Proposed ADAAG 7.2(3)(ii) states that the requirements of ADAAG 7.2(2) apply to State and local government buildings as well. ADAAG 7.2(2) covers counters and teller windows that do not have a cash register but at which goods or services are sold or distributed. These types of counters are also required to have a portion that is at least 36 inches in length with a maximum height of 36 inches. Under ADAAG 7.2(2), an auxiliary counter in close proximity to the main counter with a maximum height of 36 inches may be provided instead of making a portion of the main counter accessible. ADAAG 7.2(2) also contains an example of equivalent facilitation that may be provided in lieu of an accessible main counter or auxiliary counter. This example notes that at a hotel registration counter, equivalent facilitation might consist of (1) providing a folding shelf attached to the main counter upon which a person with a disability can write, and (2) use of the space aside the counter or at the concierge desk for handing materials back and forth. Proposed ADAAG 7.2(3)(ii) would apply this example of equivalent facilitation to counter or teller windows in State or local government facilities.

Question 25: In view of the importance of access to services provided by public entities, should the example of equivalent facilitation in ADAAG 7.2(2) for the provision of a folding shelf, apply to State and local government facilities? If not, what other examples of equivalent facilitation, if any, should be provided for counters and windows in State and local government facilities?

Counters and windows in State and local government buildings often are equipped with physical barriers or partitions that separate service personnel from the public. These barriers or partitions can impair voice communication and make it more difficult for persons to conduct a conversation, particularly those persons with hearing impairments. According to the Bureau of Census, it is estimated that 7,213,000 individuals have difficulty hearing what is said in a normal conversation with another person (not including those without any hearing at all). "Bureau of Census, Disability Functional Limitation and Insurance Coverage: 1984–85." Other surveys indicate that this figure represents a conservative estimate.

Since State and local governments provide many important services at counters or windows with partitions that separate service personnel from the public, the Board is proposing that a means of facilitating voice communication be provided at counters or windows equipped with solid partitions or safety glass. Proposed ADAAG 7.2(3)(iii) applies this requirement to those windows or portions of counters required to be accessible by ADAAG 7.2(3)(i) or (ii). This provision is a performance requirement which lists some acceptable alternatives for meeting the requirement. These alternatives include elements as simple as grills, or openings in the partition to more sophisticated devices such as intercom devices or two-way telephone handsets. The method of facilitating voice communication must be accessible to both persons who use wheelchairs and persons who have difficulty bending or stooping. This language is consistent with an existing requirement in ADAAG 4.1.3(10) which pertains to accessible drinking fountains. An appendix note states that consideration should be given to the placement of communication devices in the partition, such as grills or talk-thru baffles. When such elements are used, they should be designed or mounted to accommodate persons who use wheelchairs and persons who have difficulty bending or stooping. One possible solution would be mounting a grill at both the standard height and one at a lower height appropriate for a person in a seated position. See A7.2(3)(iii).

Consistent with ADAAG 4.1.3(17) (Telephones), proposed ADAAG 7.2(3)(iii) also requires telephone handset devices, if provided, to be equipped with a volume control. In order to accommodate persons who use wheelchairs, those devices operated by hand, such as the speak button on an intercom, must comply with the requirements of ADAAG 4.27 (Control and Operating Mechanisms).

Question 26: Are there other design solutions that can facilitate voice communication at solid partitions or safety glass? The Board also seeks cost information on those solutions noted in proposed ADAAG 7.2(3)(iii) or any other recommended alternatives.

Counters and windows sometimes contain equipment that presents information such as display screens provided at point of sales terminals and information kiosks, and equipment for testing eyesight. If such equipment is permanently installed, it should be accessible to persons who use wheelchairs. Figure A3 in the appendix

of ADAAG recommends an eye level range of 43 to 51 inches for wheelchair user.

Question 27: Should the Board include specific requirements for mounting equipment that displays information? If so, is the 43 to 51 inch eye level range sufficient to provide access to persons using wheelchairs or mobility aids?

10.4 Airports

ADAAG 10.4.1(8) was previously reserved to address security barriers at airports. Where the security barrier is a fixed element within a facility, the Board proposes to require that, in airports owned or operated by State or local governments, at least one accessible route complying with ADAAG 4.3 shall be provided at each single barrier or group of security barriers (i.e., two or more security barriers, adjacent to each other, at a single location). The requirements for an accessible route in ADAAG 4.3.9 provide that doors on such a route be accessible according to ADAAG 4.13. Consequently, an exception has been included for doors or gates on the accessible route which, for security reasons, are not intended to be opened or closed by other than security personnel. These doors are exempt from the requirements pertaining to maneuvering clearances (4.13.6), door hardware (4.13.9), opening force (4.13.11), and automatic or power-assisted operation (4.13.12).

The accessible route for passengers with disabilities should coincide with that of other passengers. Persons with disabilities should not have to pass through one security barrier and then be required to travel through a restricted, service, or employee area to reach their destination. This provision would provide passengers with disabilities the ability to travel with the same ease and convenience as other members of the public. This provision further provides that passengers with disabilities will not be separated from their carry-on items. Where passengers are separated from their personal items, they are subject to increased potential for loss or theft of their personal items while they are screened separately in a location which is not within the view of the passenger.

Although an accessible route may be provided, security and screening equipment may still be inaccessible because certain aids and mobility devices, including canes, leg braces, and wheelchairs sometimes interfere with metal detection devices. As a result, individuals with disabilities must be screened and searched individually. Some persons may consider such methods to be inconvenient or embarrassing. Since the Board's guidelines do not cover the operational aspects of accessibility, proposed ADAAG 10.4.1(8) does not address the security or screening procedures implemented at airports. Such procedures are addressed by regulations issued by the Department of Transportation under the Air Carrier Access Act which prohibits discrimination by air carriers on the basis of disability. See 14 CFR part 382. The Board is aware of the necessity for effective screening of air travelers, however, it believes that consideration should be given to installing equipment that by design and new technology can accommodate most persons with disabilities and reduce the frequency of personal screenings.

Appendix note A10.4.1(8) recommends that, where barriers consist of movable equipment, they should comply with the provisions of this section so that passengers with disabilities can travel with the same ease and convenience as other members of the public.

Question 28: The Board seeks information on types of fixed security and screening equipment that is accessible or that may accommodate a greater number of persons using mobility aids which would limit the need to individually search and screen such persons. This information is sought for advisory purposes and possible inclusion in the appendix note at A10.4.1(8).

11. Judicial, Legislative, and Regulatory Facilities

This section addresses those facilities where judicial, legislative, and regulatory functions occur. Judicial facilities consist of courthouses which are further discussed below. Legislative facilities include a town hall, city council chambers, county commissioners' meeting room, and State capitols. Typically, a State capitol would contain Senate and House chambers if bicameral, or one chamber if unicameral; and committee rooms, public meeting rooms, and other assembly areas. Regulatory facilities are those which house State and local entities whose functions include regulating, governing, or licensing activities. For example, this section would address those rooms where school board meetings, zoning appeals, and adjudicatory hearings (e.g., drivers license suspensions) are held.

The organization of State and local government legislative and regulatory functions differs widely from one State to another and from one city to another, as does the location and juxtaposition of such spaces. State governments may separately house legislative and regulatory functions. Smaller localities may choose to cluster legislative and regulatory functions within a single building or facility. For example, a city hall or town hall may house regulatory functions such as building, fire, and zoning functions, and legislative functions such as the city council.

Because the structure of judicial, legislative and regulatory facilities varies so widely from State to State and locality to locality, these proposed guidelines address the activities that take place in these facilities such as debate, deliberation or the taking of testimony. Proposed ADAAG 11.2 addresses courtrooms, hearing rooms, chambers and meeting rooms designated for public use. Many of these rooms share common elements and similar accessibility issues and, therefore, the Board has combined judicial, legislative and regulatory areas under one section. For example, where a courtroom would contain a raised judge's bench, a legislative chamber would include a speaker's rostrum which is situated in a similar fashion to the bench. The judge, like the presiding officer of a legislative body, is an authority figure. As such, they are positioned on raised platforms located in prominent places at the front of the room.

In addition to architectural considerations, the Board believes that access to information and participation in the governmental process is vitally important to all citizens. In judicial, legislative and regulatory facilities, the taking of testimony, and public debate and deliberation on local issues, laws or ordinances is an integral part of that process. Therefore, as communication is essential, the Board has proposed guidelines which address permanently installed assistive listening systems and require that these facilities take advantage of current and emerging technologies for providing information to persons with vision or hearing impairments by installing duplex outlets and wiring, conduits or raceways to facilitate future communication cabling. The proposals for each of these areas are discussed below.

With respect to judicial facilities, laws affecting accessibility to courthouses vary throughout the country. See Wood, "Court-Related Needs of the Elderly and Persons with Disabilities, Toward a Barrier Free Courthouse: Equal Access to Justice for Persons with Disabilities" American Bar Association (1991). While UFAS, State laws, and courthouse facilities guidelines require accessibility to the public areas of the courthouse

(e.g., parking, entrance, restrooms), few specify access to elements in the courtroom itself such as the jury box, witness stand, or the judge's bench.

UFAS classifies the public areas of courtrooms as an assembly occupancy and requires accessibility in "all areas for which the intended use will require public access or which may result in employment of physically handicapped persons." See UFAS 4.1.4(4). The "U.S. Courts Design Guide" published by the U.S. Administrative Office of the Courts, recommends that "courtroom space and circulation paths in the vicinity of the judge's bench, deputy clerk, law clerk, court reporter/recorder stations, and the witness box should be designed to accommodate handicapped ramps, lifts, or other required apparatus as they are needed." ("U.S. Courts Design Guide" at 97 (1991)). The National Center for State Courts published "The Courthouse", a planning and design guide for court facilities which recommends accessibility to the judge's bench, the clerk's station, the court reporter's station, the witness stand, the attorney tables, and the juror box. ("The Courthouse" at 64–70 (1991)).

General requirements for accessibility to courthouses may be found in State and local building codes and in guidelines developed by judicial committees. For example, the California Accessibility Standards require courtrooms (including the jury box, witness stand, public seating and other areas) to be accessible. California Accessibility Standards, title 24 part 2 section 712 (1989). Similar requirements are contained in the New Jersey Administrative Code which provides for courtrooms in new construction to be accessible in accordance with the requirements for "large buildings" and "small buildings". N.J. Admin. Code title 5, section 23–7.2(a) (1)–(2) (1991). Similarly, the Virginia Courthouse Facility Guidelines state that "handicapped citizens and court staff should enjoy convenient entry to all court facilities and barrier-free internal access to all appropriate spaces." See Virginia Courthouse Facility Guidelines, section 1.5 Handicapped Access. The Board is proposing requirements consistent with these State codes and guidelines.

Courthouse facilities are rich in tradition and symbolism and pose unique challenges due to complex, interwoven requirements, and the symbolic relationship of elements peculiar to courtrooms. The acoustics and the spatial relationship and sightlines between the judge, jury, witness, litigants, and spectators must all be carefully balanced to ensure that everyone will be able to adequately see, hear, and participate in the proceedings. (See Greenberg, "Symbolism in Architecture: Courtrooms" Architectural Record at 114–116 (May 1979)). As stated by Allen Greenberg,

> The judge is an impartial arbitrator and is therefore positioned on a raised podium in the center of the front of the room. Defense and prosecution are equal adversaries and, as such, are each provided with seats at assigned tables in the well of the courtroom facing the judge * * *. The jury box is placed at the side of the room, deliberately divorced from the axial relationship of judge, counsel and public. This placement reflects the impartiality of the jurors, who must decide guilt or innocence. The witness stand is located adjacent to the judge's bench facing the two parties. This provides the latter with their constitutional right to confront the opposing counsel's witnesses. Seen in this light, the traditional American courtroom layout is notable for its marked orientation toward the rights of the accused. (*Id.* at 115).

While the Board recognizes the significance of symbolism in the courtroom, it is very important that all citizens be able to participate equally in the legal process. In proposing these guidelines, the Board believes that accessibility can be incorporated into the design of the courtroom without adversely affecting the spatial or symbolic relationship between the participants.

During the initial rulemaking, the Board requested information on access to jury boxes, witness stands, and judges' benches. See 56 FR 2296 (January 26, 1991). An overwhelming majority of responses favored including provisions in ADAAG for jury boxes, witness stands and judges' benches. One commenter disagreed, stating that access to such areas is a workplace issue more properly addressed under title I of the ADA.[5] Several commenters distinguished between the different areas, taking the position that jury boxes and witness stands should be accessible, but judges' benches should be covered under title I. One commenter recommended that judges' benches should be adaptable and only 5 percent of the seating in jury boxes should be accessible. Comments received from the American Bar Association addressed both program and architectural issues. The American Bar Association supported more accessibility in courtrooms and within the judicial process as a whole.

Some of the comments received suggested the use of scheduling procedures as an alternative to requiring all courtrooms to be accessible (e.g., 30 percent of the courtrooms should be accessible in combination with scheduling procedures). With respect to judges' benches, a concern was raised that the judge's bench should remain at a higher level to signify authority and to provide sightlines. The Board has taken these comments into consideration and has developed guidelines for judges' benches, jury boxes and witness stands, as well as other courthouse areas. The requirements for those areas are discussed below.

Additionally, many of the comments addressed communication accessibility for individuals with hearing impairments. A third of the commenters stated that courthouses should be equipped with assistive listening systems. A few of those commenters suggested use of "real time captioning" by the courts. Some commenters took the position that 50 percent of the courtrooms should be accessible to individuals with hearing impairments. One commenter suggested sound absorbent materials in walls would be appropriate, as well as assistive listening devices with receivers for 8 percent of the seating capacity, use of a visual announcement system, interpreter services, and the availability of transcripts. In response to the comments received and in accordance with section 504 of the ADA, the Board has also included provisions for persons with vision and hearing impairments in this section.[6]

11.1 Judicial, Legislative and Regulatory Facilities

This section is a scoping provision which applies all the provisions of ADAAG 4 (Accessible Elements and Spaces: Scope and Technical Requirements) for buildings and facilities to judicial, legislative and regulatory facilities, in addition to the applicable requirements of this section. All public and common use areas would be subject to the applicable requirements contained in ADAAG 4.1 through 4.35. Examples of public and common use areas are given in the appendix note. See A11.1.

[5] Modifications to an individual workstation would be covered by reasonable accommodation under title I of the ADA which prohibits discrimination in employment on the basis of disability. The Equal Employment Opportunity Commission (EEOC) is responsible for issuing regulations to implement title I of the ADA.

[6] Section 504 of the ADA requires that the guidelines issued by the Board "establish additional requirements, consistent with this Act, to ensure that buildings [and] facilities * * * are accessible in terms of architecture and design * * * and communication, to individuals with disabilities."

11.2 Courtrooms, Hearing Rooms, Chambers and Meeting Rooms

This section requires that where doors or gates, jury boxes, witness stands, fixed seating, judges' benches, clerks', litigants', court reporters', and bailiffs' stations, and lecterns are provided, each must be accessible and on an accessible route complying with ADAAG 4.3 (Accessible Route). It further requires that the accessible route to each element coincide with the circulation path provided for all persons using the element. For example, often there are different circulation paths provided for jurors, witnesses, and spectators. This section would require each circulation path to be accessible.

Paragraph (1) requires doors or gates designed to allow passage into the well of the courtroom, the witness stand, the jury box, and the speaker's rostrum and other areas to comply with ADAAG 4.13 (Doors). This provision is consistent with ADAAG 4.1.3(7) (Doors) and will ensure that minimum maneuvering clearances are provided to approach, operate, enter and exit through the door or gate.

Paragraph (2) requires all jury boxes and witness stands to be accessible and that each jury box have at least one accessible wheelchair space. Accessible spaces must be provided within the defined area of the jury box or witness stand. Jurors are selected at the outset of each trail and thus it is impossible to predict when an accessible courtroom will be needed. Accordingly, the Board is proposing at least one accessible seating space in each jury box. This provision allows readily removable seats to be installed in the jury box and witness stand so that the accessible spaces may also be used by persons not using wheelchairs. Paragraph (2) further requires minimum maneuvering clearances for the approach to the accessible spaces, referencing ADAAG 4.33.2 (Size of Wheelchair Locations). Although Figure 46 illustrates space requirements for two wheelchair seating spaces, this provision only requires a minimum of one accessible seating space. Where a fixed counter is provided in the witness stand (e.g., for a microphone), it must comply with ADAAG 4.32 (Fixed or Built-in Seating and Tables) to ensure sufficient knee clearance. Clear floor space for a forward approach must also be provided. The maximum height of controls and operating mechanisms must be 48 inches and comply with 4.27.3 (Height) and 4.27.4 (Operation). Although ADAAG 4.27.3 allows controls to be placed at either a forward or a side reach range, the Board has specified the forward reach range as it is presumed that in jury boxes and witness stands, the seated individual must be facing forward and a forward reach to controls is necessary. The 48 inches specified for such a forward reach is a maximum height requirement. If a desk or other writing surface is provided, the individual must reach over an obstruction to operate controls. Therefore, ADAAG 4.2.5 provides that controls are to be mounted at a maximum height of 48 inches only when they are located less than 20 inches from the leading edge of the obstruction (i.e., shelf). When controls are located between 20 to 25 inches from the obstruction they must be mounted at a maximum height of 44 inches as required in ADAAG 4.2.5 which is referenced by ADAAG 4.27.3. When controls are placed over an obstruction, they may never be further than 25 inches from the leading edge of that obstruction for a forward reach.

Paragraph (2) contains an exception for alterations where it is technically infeasible to provide a fixed means of vertical access to the witness stand or jury box. For example, if providing a fixed ramp to a jury box would result in reducing seating needed to meet the minimum legal requirements for jurors in a criminal courtroom, only clear floor space to accommodate a portable ramp would be required. Or, in an alteration to a witness stand, if physical constraints would require an alteration of the judge's bench, jury box or enlarging the courtroom, only clear floor space to accommodate a portable ramp would be required. This exemption only applies to the fixed means of vertical access. All other requirements in paragraph (2) (i.e., knee clearance) would still apply. As in new construction, accessible spaces must be provided within the defined area of the jury box or witness stand.

There are several options in designing an accessible jury box and witness stand. In Federal courthouses, the General Services Administration is experimenting with a multi-tiered jury box, where the accessible spaces are incorporated with other seating located on the floor level and additional seating is provided in raised tiers. Other acceptable tiered jury box designs may incorporate a ramp or lift in the courtroom or outside the courtroom from a restricted corridor.

Many persons using wheelchairs entering and exiting a platform lift in one direction can be accommodated on a minimum 30 inch by 48 inch (760 mm×1220 mm) lift. However, if a person is required to make a 90 degree turn either entering or exiting the platform lift, additional maneuvering clearances at the lift gate, and an increase in the platform size will need to be provided. Applying the minimum maneuvering clearances at doorways and gates illustrated in Figures 25 and 26 show that the required clear floor space depends on whether the lift door can be approached straight on or at right angles. For a direct approach, straight through the lift, Figure 26 shows that a lift platform with a minimum clear space of 48 inches (1220 mm) in the direction of travel is required. If a right angle turn must be made on the platform to exit, Figure 25(b) shows that a minimum clear width of 54 inches (1370 mm) perpendicular to the direction of approach is needed to accommodate the turn. However, these minimum clearances only illustrate the clearances needed to operate the gate from a front approach, and do not take into account the difficulty of making a 90 degree turn while backing out of the lift, a particularly difficult maneuver for a person who uses a motorized wheelchair. Ideally, the platform lift should allow sufficient space for a person to make a 360 degree turn. Widening the gates to provide a 36 inch to 42 inch (915 mm×1065 mm) clear width will provide additional maneuvering clearance.

The Board is considering requiring maneuvering clearances complying with ADAAG 4.2.3 (Wheelchair Turning Space) to ensure independent use in areas that are likely to be raised so that persons using wheelchairs do not have to exit the areas backwards. The areas the Board is considering adding this requirement include the jury box, witness stand, judge's bench, clerk's station, speaker's rostrum, raised dais, and the bailiff's and court reporter's stations.

Question 29: Should the guidelines require maneuvering spaces in the jury box, witness stand, judge's bench, clerk's station, speaker's rostrum, raised dais, and the bailiff's and court reporter's stations? What would be the costs associated with such a requirement? Additionally, the Board encourages commenters to submit drawings, slides, photographs and cost information of other design alternatives used in making the jury box, witness box or judge's bench accessible. How has the concern for maneuvering space been addressed?

Paragraph (3) specifies the number of wheelchair spaces required where spectator, press, or other areas with fixed seats are provided. This section references the scoping provisions in ADAAG 4.1.3(19)(a) (Assembly Areas). The Board is proposing that where the

spectator seating capacity exceeds 50 and is located on one level that is not sloped or tiered, the accessible spaces must be provided in more than one seating row.

ADAAG requires seating dispersal only when the seating capacity exceeds 300 because most fixed seats in small movie theaters are situated to provide a clear line of sight to the screen. Furthermore, these theaters have tiered or sloped aisles, which make it more difficult to provide accessible seating in more than one location. Courtrooms, however, differ in this regard in that most spectator seating areas are on a single level that is not sloped or tiered, which facilitates locating accessible seating spaces in more than one location. Where the seating is not on one level, but is sloped or tiered, the provision does not require dispersal. The provision for dispersal applies only to the total seating capacity in the spectator seating area, not the combined total of fixed seats in a courtroom.

Paragraph (4) requires all fixed judges' benches, clerks' stations, speakers' rostrums and a minimum of one raised dais to be adaptable. This provision references ADAAG 4.32 (Fixed or Built-in Seating and Tables) and requires a front approach to the bench, station or rostrum. The maximum height of controls and operating mechanisms must be 48 inches and comply with 4.27.3 (Height) and 4.27.4 (Operation). If the high forward reach is over an obstruction, reach and clearances must be as shown in Figure 5(b). This requirement is further discussed in paragraph (2). An appendix note further recommends that equipment such as a portable ramp, be on hand so that accessibility can be accomplished to at least one judge's bench and clerk's station within a few hours to accommodate court proceedings. See A11.2.1(4).

Although the areas identified in paragraph (4) are work stations, due to the complexity of courtroom and legislative chamber design and the difficulty of accommodating subsequent physical change, the Board believes that requiring adaptable judges' benches, clerks' stations, speakers' rostrums and a minimum of one raised dais, where provided, will significantly facilitate a reasonable accommodation for an employee in the future. Consistent with the definition of "adaptability" in ADAAG 3.5 (Definitions), the guidelines clarify the term "adaptable" and describe how it is applied to these areas. Adaptability means that maneuvering clearances and other features (e.g., fixed controls) are designed into the space so that accessibility can be easily provided at a later date. For example, an adaptable judge's bench which is designed for a future installation of a ramp would have the required maneuvering clearances to approach, enter, and exit the ramp, to maneuver at the bench (e.g., knee clearance), and to reach any fixed controls (e.g., alarm buttons) already designed into the space. The ramp would be installed at a later date when a reasonable accommodation is needed. An appendix note further recommends that equipment such as a ramp, be on hand so that accessibility can be accomplished to at least one judge's bench and clerk's station to accommodate court proceedings. This provision is particularly important in courtrooms where judges and clerks are assigned on a temporary or rotating basis. See A11.2.1(4).

Paragraph (5) specifies minimum clear floor space, table height, and knee clearance requirements for fixed or built-in stations, including tables for bailiffs', court reporters', and litigants' stations. This provision is consistent with UFAS 4.1.2(17) which requires fixed or built-in seating, tables or work surfaces in accessible spaces to have 5 percent, but not less than one seating space(s), tables or work surfaces complying with UFAS 4.32 (Seating, Tables and Work Surfaces). This provision references ADAAG 4.32 (Fixed or Built-in Seating and Tables) and requires a front approach to the station or table. The maximum height of controls and operating mechanisms must be 48 inches and comply with ADAAG 4.27.3 (Height) and ADAAG 4.27.4 (Operation). If the high forward reach is over an obstruction, reach and clearances must be as shown in Figure 5(b). However, as the bailiffs', court reporters' and litigants' stations are usually designed with movable furniture (which is not covered by ADAAG but rather the Department of Justice's regulations) this provision may apply in few situations. Where furniture is provided, an appendix note recommends appropriate maneuvering clearances such as clear floor space and knee clearance under tables when such furniture will be utilized by the public (e.g., the litigant's station). See A11.2.1(5).[7]

Paragraph (6) requires fixed lecterns to be a maximum height and have knee clearance to accommodate litigants and speakers who use wheelchairs. This provision references ADAAG 4.32 (Fixed or Built-in Seating and Tables) and requires a front approach to the lectern. The maximum height of controls and operating mechanisms shall be 48 inches and comply with ADAAG 4.27.3 (Height) and 4.27.4 (Operation). Similar to paragraph (5), this provision may apply in relatively few situations as portable lecterns are more common. Where portable lecterns are specified, the Board encourages the selection of lecterns with adjustable heights and knee clearance underneath. Such lecterns will help facilitate use of the lectern and approaching the microphone.

11.3 Jury Assembly Areas and Jury Deliberation Areas

This section requires all jury assembly areas and jury deliberation rooms to be accessible. Since the jury deliberation room is a controlled area, where amenities such as refreshment areas, fixed tables and drinking fountains are provided, they must comply with the provisions in this section. Where restroom facilities are provided, they are covered by ADAAG 4.1.3(11) (Toilet Facilities) which requires each public and common use toilet room to comply with ADAAG 4.22 (Toilet Rooms).

Paragraph (1) references technical specifications for refreshment areas or kitchenettes in ADAAG 9.2.2 which specifies maximum counter height, clear floor area, reach ranges, and mounting height. The technical specifications would also apply to fixed refreshment dispensers where provided. For example, a wall mounted microwave would have to comply with 9.2.2(7) which references 4.2.4 (Clear Floor or Ground Space for Wheelchairs), 4.2.5 (Forward Reach), 4.2.6 (Side Reach) and 4.27 (Controls and Operating Mechanisms).

Paragraph (2) requires 5 percent but not less than one, fixed or built-in seating and tables to be accessible and comply with ADAAG 4.32. As discussed in proposed ADAAG 11.2.1(5) relative to litigants' stations, tables in jury deliberation rooms and assembly areas are usually movable furniture, and

[7] In its NPRM for regulations implementing title III of the ADA, the Department of Justice included a proposed section 36.309 which would have required that newly purchased furniture or equipment made available for use at a place of public accommodation be accessible, to the extent such furniture or equipment is available, unless this requirement would fundamentally alter the goods, services, facilities, privileges, advantages, or accommodations offered, or would not be readily achievable. See 56 FR 7452 (February 22, 1991). In its final rule, proposed section 36.309 was omitted because the Department of Justice determined that its requirements were more properly addressed under other sections including sections 36.201 and 36.202 which set out general prohibitions against discrimination based on disability. Title II of the ADA provides similar prohibitions for state and local government entities. See 42 U.S.C. 12132 and 28 CFR 35.130.

therefore this provision may apply in few situations. Where movable furniture is provided, an appendix note recommends providing appropriate maneuvering clearances in the room and choosing furniture that would allow appropriate knee clearance under tables. See A11.3.1(2).

Paragraph (3) requires drinking fountains to be accessible to persons using wheelchairs and those who have difficulty bending or stooping. This provision is consistent with ADAAG 4.1.3(10)(a).

11.4 Courthouse Holding Facilities

11.4.1 Holding Cells: Minimum Number

This section applies to courthouse holding facilities including central holding cells and court-floor holding cells (i.e., those serving courtrooms). Where provided, at least one adult male, juvenile male, adult female, and juvenile female central holding cell must comply with the requirements in this section. Central holdings facilities are typically designed with sight and sound separation between men, women and juveniles. Where such cell separation is provided, the guidelines require at least one of each type of cell to be accessible. While there may be additional "types" of cells (i.e., isolation, group or individual cells) the Board's definition of "type" is limited to adult male, juvenile male, adult female, and juvenile female holding facilities. Court-floor holding cells, however, are not necessarily designed with sight and sound separation between adult males, juvenile males, adult female, and juvenile females. Therefore, in such instances, this provision would permit only one accessible cell to serve a courtroom.

11.4.2 Requirements for Accessible Cells

This section contains the minimum requirements for accessible cells. In proposing these requirements, the Board has taken into account various security considerations which are further discussed below. Accessible cells and the elements or spaces serving them must be on an accessible route.

Paragraph (1) requires that doors to accessible spaces and on an accessible route comply with ADAAG 4.1.3(7) (Doors). However, doors to accessible spaces and on an accessible route are exempt from the requirements pertaining to maneuvering clearances (4.13.6), door hardware (4.13.9), opening force (4.13.11), and automatic or power-assisted operation (4.13.12) in those areas where detainees are escorted by security personnel at all times.

Paragraph (2) requires toilet facilities to comply with ADAAG 4.22 (Toilet Rooms) and bathing facilities to comply with ADAAG 4.23 (Bathrooms, Bathing Facilities, and Shower Rooms). Where privacy screens are provided, they may not intrude on the clear floor space required for fixtures. The Board recognizes that typical cell design often does not provide a separate room for water closets or shower stalls. Water closets and lavatories are usually provided within individual cells behind privacy screens. The references to ADAAG 4.22 (Toilet Rooms) and ADAAG 4.23 (Bathrooms, Bathing Facilities, and Shower Rooms) do not require that separate toilet rooms or shower rooms be provided. For example, a facility may choose to provide individual fixtures and a privacy screen instead of a separate toilet or shower room. In that instance, the applicable clear floor space and mounting height requirements should be followed in ADAAG 4.22 and ADAAG 4.23 as it applies to each fixture provided.

Typical cell design includes a combination stainless steel water closet and lavatory unit which may also include a drinking fountain. The Board understands that some courthouse design guidelines may recommend a combined unit to maximize the limited amount of space within cells. However, the Board is not aware of standard combination units which fully meet ADAAG requirements for water closets and lavatories. For example, some existing "accessible" designs, such as those where the water closet projects out from the unit, would actually prohibit the installation of a 36-inch grab bar behind the water closet and would not allow for appropriate positioning of the grab bar in relation to the centerline of the water closet. See Figure 29. Additionally, some units provide a drinking fountain spout behind the wash basin which would not be usable by a person with a disability because they do not meet ADAAG 4.15.3 (Spout Location). Separate stainless steel lavatories, water closets, and drinking fountains are readily available that do meet ADAAG requirements.

Question 30: Are there standard combination units available which meet the requirements of the proposed guidelines? If so, what are the specifications of these types of combination units? Are combination units required to the exclusion of separate fixtures by any State, local or other codes?

The ADAAG requirements for water closets, bathtubs and showers require grab bars, which are considered essential for use of such elements by persons with disabilities. However, grab bars may be prohibited in some holding or detention facilities in order to reduce the risk of suicide. While the Board is not aware of a specific case in which a person has committed suicide using grab bars, there are numerous cases where persons have asphyxiated themselves by hanging underneath beds and chairs. "The Training Curriculum on Suicide Detection and Prevention in Jails and Lockups" developed by Jail Suicide Prevention Information Task Force describes how typical steel beds with holes in the bottom have been used to attach suicide nooses. The task force was sponsored by the National Center on Institutions and Alternatives, in cooperation with Juvenile, Criminal, Justice International Inc., with assistance from the National Sheriffs' Association. The training curriculum further recommends:

> * * * cells and rooms to be protrusion-free. While it is more common for suicide nooses to be affixed to bars and grills, all fixtures should be given attention, since beds, shelves, sprinklers, door handles, towel racks and water faucet lips have been used for this purpose. (Chap. 16–3B).

A grab bar without any open surfaces that is recessed in the wall is one possible alternative that would meet the ADAAG requirements as shown in Figures 39 (c) and (d). Although these figures illustrate handrail designs, the Board feels similar designs can be used for grab bars in security areas. Also, the Minnesota Regional Treatment Center Design Consortium recommends an infill welded plate at the bottom of the grab bar which would not be prohibited by ADAAG requirements. (See "Mental Health-Master Specification for Safety and Suicide Resistant Design at Minnesota Psychiatric Hospitals" at 14 (1990)). In view of these design alternatives, the Board is not inclined to provide an exception for grab bars at water closets and bathing facilities serving accessible cells.

Question 31: What are the experiences with suicide in detention and correctional facilities relative to providing accessibility features? The Board seeks further information on whether certain grab bar design solutions, including those discussed above, can be used to provide access but which do not facilitate suicide attempts. Where possible, responses should include any available information on these and other design solutions and their costs.

Concern has also been raised as to whether or not grab bars create a security risk in that they may be torn from the wall and used as a weapon. The Board feels that such concerns can be addressed by the structural strength and securement of the grab bars. Grab bars are currently required to comply with the structural strength requirements in ADAAG 4.26.3 (Structural Strength). However, these are minimum guidelines which may be exceeded where necessary.

Question 32: The Board seeks comment on whether grab bars can be installed without creating a security risk.

Paragraph (3) requires that accessible clear floor space be provided on one side of beds. Upper bunks, which often may be installed due to crowding, may interfere with the transfer between the lower bed and a wheelchair due to the insufficient vertical distance between the upper and lower bunk. While not requiring a specific distance, the Board recommends that the necessary vertical distance between the upper and lower bunk be sufficient to allow a person to sit upright during a transfer.

Paragraph (4) requires drinking fountains and water coolers serving accessible cells to be accessible to individuals who use wheelchairs and those who have difficulty bending or stooping. This provision is consistent with ADAAG 4.1.3(10(a).

Paragraph (5) requires fixed or built-in seating and tables to be accessible. This would pertain to fixed seating or table provided in the cell and is consistent with ADAAG 4.1.3(18) which requires fixed seating and tables where provided in a public or common use area to be accessible. Because the cell is a secured area, the guidelines require compliance with ADAAG 4.32 (Fixed or Built-in Seating or Tables) in each accessible cell.

Paragraph (6) requires that fixed benches be mounted at a specific height and be a minimum of 24 inches by 48 inches. It further requires compliance with the structural strength requirements in ADAAG 4.26.3 (Structural Strength). The height requirements are consistent with those for water closets (ADAAG 4.16.3 Height), shower seats (ADAAG 4.21.3 Seat), and benches in dressing rooms (ADAAG 4.35.4 Bench), and would allow for a transfer from a wheelchair.

11.4.3 Visiting Areas

This section requires that where fixed cubicles are provided, at least 5 percent but not less than one, on each side must have the maximum counter height and knee clearance underneath as required by ADAAG 4.32 (Fixed or Built-in Seating or Tables). It also requires a method to facilitate voice communication if solid partitions or safety glass separate visitors from detainees.

The scoping and technical specification in paragraph (1) is consistent with ADAAG 4.1.3(18) which requires in public and common use areas that 5 percent, but not less than one, of the built-in seating areas or tables and counters to have a maximum height of 34 inches and knee clearance underneath. Although this requirement applies to both sides of the fixed cubicles, it does not require that one particular cubicle be accessible on both sides.

Question 33: Should the guidelines require at least one cubicle to be accessible on both sides to accommodate those situations where both the detainee and visitor require accessible features?

Where counters are provided without a cubicle, a portion of the counter on both sides which is a minimum 36 inches in length must be accessible. The latter requirement is consistent with ADAAG 7.2 which also defines a portion of a counter as 36 inches in length.

Paragraph (2) requires a method to facilitate voice communication if solid partitions or safety glass separate visitors from detainees. This provision is further discussed under ADAAG 7.2(3).

Paragraph (3) requires accessible cubicles and counters to be identified by the International Symbol of Accessibility on both sides to be visible by both visitors and detainees. This provision is consistent with ADAAG 4.1.2(7) and 4.1.3(17)(b) which requires elements and spaces of accessible facilities to be identified by the international Symbol of Accessibility.

An appendix note clarifies that accessible cubicles may have fixed seats if the required clear floor space is provided within the area defined by the cubicle. See A11.4.3. This design would allow the "accessible" cubicle to be utilized by all persons. Where both the floor space and the fixed seat are provided in one cubicle, a method to facilitate voice communication would need to be usable from both areas. A wire mesh barrier typically provided in holding facilities to separate visitors from detainees would be one way to satisfy this requirement. If a glass partition is utilized, one centrally located telephone handset can be provided. The appendix note further recommends that when assistive listening systems are provided, the needs of the intended user and characteristics of the setting should be considered as described in A4.33.7 and Table A2.

11.5 Restricted and Secured Entrances

This section requires at least one restricted entrance and at least one secured entrance to be accessible where provided. Restricted entrances are defined as those used by judges, court personnel and other parties on a controlled basis; and secured entrances as those used by detainees and detention officers. In addition, if direct access is provided for pedestrians from an enclosed parking garage to a restricted entrance, at least one direct entrance from the garage to the restricted entrance shall be accessible.

ADAAG 4.1.3(8) requires at least 50 percent of all public entrances to be accessible and, in addition, accessible entrances to enclosed parking garage, pedestrian tunnels and elevated walkways. This section only addresses restricted and secured entrances. Therefore, the requirements of ADAAG 4.1.3(8) must be satisfied independently of this section. Typical courthouse design contains three distinct entrances and interior circulation routes which do not cross one another: public, restricted and secured. This section requires at least one restricted entrance and at least one secured entrance to be accessible. In addition, if direct access is provided for pedestrians from an enclosed parking garage to a restricted entrance, at least one direct entrance from the garage to the restricted entrance shall be accessible.

Question 34: What is the cost impact of requiring at least one restricted entrance and at least one secured entrance to be accessible?

In Question 6, the Board has requested comments on other types of State and local government facilities which may also have restricted and secured entrances and the appropriate number which should be accessible.

11.6 Security Systems

This provision requires an accessible route complying with ADAAG 4.3 to be provided through fixed security barriers. Where the security barriers incorporate equipment which cannot be made accessible, an alternate accessible route must be provided adjacent to the fixed security screening devices. For example, metal detectors may be triggered automatically by wheelchairs or braces and therefore cannot be made accessible. In most cases, the security devices consist of movable equipment or furniture and may not be covered under the guidelines. However, where

the security barrier is a fixed element within a facility, an accessible fixed barrier or an accessible route adjacent to the fixed security device must be provided to facilitate an equivalent path of travel. The path of travel must permit persons with disabilities passing through security barriers to maintain visual contact with their personal items to the same extent as do other members of the public. An exception is provided so that doors and gates which are designed to be opened solely by security personnel need not comply with the requirements for maneuvering clearances at doors (4.13.6), door hardware (4.13.9), door opening force (4.13.11), and automatic doors and power assisted doors (4.13.12).

11.7 Two-Way Communication Systems

This section requires two-way communication systems to provide both visible and audible signals so that person with hearing and speech impairments can utilize the systems. It further requires that such systems comply with the clear floor space, height and operating requirements for controls in ADAAG 4.27 (Controls and Operating Mechanisms). This provision is consistent with ADAAG 4.3.11.4 (Two-way Communication in Areas of Rescue Assistance) and ADAAG 4.10.14 (Emergency Communications in Elevators). An appendix note clarifies that this requirement can be met with a device that would allow security personnel to respond to a caller with a light indicating that assistance is on the way. This requirement would enable a person with hearing and speech impairments to communicate with security personnel to gain access to restricted areas.

11.8 Electrical Outlets, Wiring and Conduit for Communication Systems

This section requires that duplex electrical outlets be provided to support communication equipment for persons with vision and hearing impairments in all courtrooms, hearing rooms (including judges' chambers when used as hearing rooms), jury deliberation and orientation rooms, and meeting rooms designated for public use. In addition to duplex electrical outlets, this section requires appropriate wiring, conduit, or raceways to support equipment and systems to accommodate participants with vision and hearing impairments in judicial, legislative and regulatory proceedings.

The Board feels that this provision will assist State and local governments to comply with Department of Justice's regulations implementing title II which require public entities to take such steps as may be necessary to ensure effective communication with individuals. See 28 CFR 35.160.

"Meeting rooms designated for public use" refers to those areas of a facility in which public debate or discussion on local issues, laws or ordinances, or regulations takes place. "Hearing rooms", refers to those areas where hearings are held, other than courtrooms. Judge's chambers are included in this section when such chambers are used as hearing rooms.

In courtrooms, duplex electrical outlets are required in specified locations. State and local codes may contain provisions for the number and general placement of convenience duplex outlets. Therefore, the Board is proposing to require additional outlets to accommodate specific use requirements for communication access: Where State and local codes specifically require outlets to support communication equipment, this provision would be satisfied if such outlets are provided in the specific locations required in this provision.

Some states have developed guidelines which recommend that courthouses be designed with the flexibility to accept audio-visual and data systems. (See Courthouse Facility Guidelines, State of New Jersey, 1989, Section 3.21 Technology; and Virginia Courthouse Facility Guidelines, 1987, Section 2.7 Sound and Video Recording). The "U.S. Courts Design Guide" published by the Administrative Office of the U.S. Courts in 1991, recommends that electrical duplex outlets be provided at the judge's bench; deputy clerks' stations; witness stand; jury box and law clerk's, bailiff's, court reporters', and litigants' stations. (Chapter 3: Courtrooms, at 147). See also, "The Courthouse" National Center for State Courts at 62 (1992). Additionally, the "U.S. Courts Design Guide" suggests that data transmission outlets should be located at the judge's bench, deputy clerk's station; court reporter's/recorder's station, attorneys' and litigants' stations, and law clerk's station. (Id. at 152). The "U.S. Courts Design Guide" further recommends that a provision should be made for both present and future needs for power and data cabling at each attorney's table and at the court reporter's station. (Id. at 135–136). Although the recommendations in these guides do not necessarily pertain to accessibility, the trend in courtroom design is to provide for maximum future utilization of all types of technology. The provisions in proposed ADAAG 11.8 extend the application of this trend to include technology for persons with hearing and vision impairments.

The Board is aware that permanent wiring for all future technology cannot be anticipated, however, conduit or raceways can be provided to support a variety of current and future uses. For example, so-called "smart" technology often includes bundled wiring harnesses which can be easily installed in new construction. Examples of current technology which assists persons with hearing impairments may include assistive listening systems, or computer assisted real-time transcription. Examples of current technology which assists persons with vision impairments may include computerized reading devices with braille or magnification capability or closed circuit television reading or viewing devices.

Question 35: The Board believes that providing supplementary wiring, conduits or raceways at the construction phase can be done for minimal additional cost. The Board requests specific examples and cost information where supplementary wiring, conduits or raceways have been provided in newly built judicial, legislative and regulatory facilities.

This section does not mandate any specific system or technology, but only the physical capacity to accommodate future connections and systems that may be appropriate. Concern has been raised regarding the potential conflict between technology used in the jury deliberation room and the right to a jury trial which requires that jury deliberations are kept confidential. Jurors need to know that what they say in the jury room will not be revealed. There is a concern that the use of transcription systems, which may record the conversation in the jury deliberation room, will inhibit jurors and deny individuals the right to a jury trail. Similarly, the use of transcription systems in order to enable a client or attorney with a hearing impairment to communicate, raises similar questions regarding the confidentiality of attorney-client communications. Attorneys, clients and jurors need to be confident that their communications will not be heard by other persons at the time of the communication or later. The right to confidentiality of litigants who use computer aided transcription or other systems should be as secure as that of other litigants. The issue of whether a particular system or technology is appropriate for a specific application should be based on full consideration of the variables, including the need for privacy.

Question 36: The Board seeks comment on how issues of

confidentiality and privacy can be addressed while providing accessibility for persons with vision and hearing impairments.

11.90 Permanently Installed Assistive Listening Systems

This section requires that certain areas in judicial, legislative and regulatory facilities have a permanently installed assistive listening system comply with ADAAG 4.33.6 and 4.33.7. This provision is similar to ADAAG 4.1.3(19)(b) (Assembly Areas) which requires permanently installed assistive listening systems where audible communications are integral to the use of assembly areas, if the assembly area (1) accommodates at least 50 persons or has an audio-amplification system and (2) has fixed seating. However, the facilities covered by this section would rarely meet the threshold requirements of ADAAG 4.1.3(19)(b) (Assembly Areas) as typically there are no fixed seats and, in many instances the occupant load is fewer than 50 people. Accordingly, the Board has proposed basing the threshold requirement for permanently installed assistive listening systems on the type of room.

An appendix note references proposed ADAAG 11.8 (Electrical Outlets, Wiring, Conduit for Communication Systems) which requires that courtrooms, hearing rooms, jury deliberation and jury orientation rooms, and all meeting rooms designated for public use in judicial, legislative or regulatory facilities have a duplex outlet and wiring, conduit or raceways to support communication equipment. this requirement is in addition to the requirement in this section for permanently installed assistive listening systems and is intended to facilitate the use of portable assistive listening systems.

Paragraph (1) applies to judicial facilities, and requires 50 percent, but not less than one, of each type of courtroom (at least one of which shall have a jury box, where available) to have a permanently installed assistive listening system. "Courtrooms" refers to those areas which are generally open to the public (such as a room where a criminal trail is conducted), as opposed to smaller "hearing rooms" where admittance is generally restricted (for example where a domestic case is heard). An appendix note acknowledges the large variation in the assignment of courtrooms among jurisdictions and the difficulty in listing each "type" of courtroom or courtroom use. However, where multiple courtrooms are available, they typically fall into three "types". The appendix note defines these "types" as family (or domestic) courtroom, civil courtroom, and criminal courtroom. This definition is very broad; for example it does not distinguish between a criminal court used for adults and one used for juveniles. Proceedings such as juvenile or probate would generally fall under the three categories. For example, a courthouse has ten courtrooms: Six are assigned primarily to criminal matters (including one courtroom assigned to handle juvenile cases); one to family or domestic matters; and three to civil proceedings. Permanently installed assistive listening systems would be required in a total of six courtrooms, dispersed as follows: Three courtrooms assigned to criminal or juvenile matters, one courtroom assigned to family or domestic matters, and two courtrooms handling civil proceedings. The Board would suggest that one of the required permanently installed assistive listening systems be placed in the courtroom assigned to handle juvenile proceedings (as one of the criminal courtrooms) even though the Board does not regard courtrooms that handle juvenile cases as a different type of courtroom. See A11.9(1).

In some jurisdictions, courtrooms are assigned to accommodate more than one type of proceeding. For example, in a single courtroom, a civil trail may be in progress one day and a criminal matter the next day. In those facilities where courtrooms are not dedicated to a single type of proceeding, the guidelines would require that 50 percent of all courtrooms provided have a permanently installed assistive listening system.

In addition, paragraph (1) requires 50 percent, but not less than one, of each of the following types of rooms to have a permanently installed assistive listening system: judicial hearings rooms, jury deliberation rooms, and juror orientation rooms. "Hearing rooms", refers to those areas where hearings are held, other than courtrooms. Typically, these rooms consist of a conference table and chairs and admittance is generally restricted to the participants in the proceedings.

Paragraph (2) applies to legislative and regulatory facilities and requires 50 percent, but not less than one, of each of the following types of rooms to have a permanently installed assistive listening system: chambers and hearing or meeting rooms designated for public use where legislative or regulatory business is conducted.

"Chambers" refers to areas such as the council chambers in a city hall where public debate over proposed ordinances may occur. In addition to the requirement for 50 percent of the total number of chambers, in State legislative facilities where separate chambers are provided for a bicameral legislature (i.e., House and Senate), the guidelines require each to have a permanently installed assistive listening system.

"Hearing rooms or meeting rooms designated for public use" refers to those areas of a facility in which public debate or discussion on local issues, laws, ordinances, or regulations takes place. In this section, the terms "hearing rooms" and "meeting rooms" are used interchangeably. Hearing rooms in legislative and regulatory facilities differ from hearing rooms in judicial facilities in that they are open to the public and are usually much larger. Examples of hearing rooms or meeting rooms would include areas in which hearings on zoning applications or waivers are held; or where town council meetings or school board meetings are conducted. It would also include adjudicatory administrative hearings (e.g., drivers license suspension hearings). On the State level, a hearing or meeting room might be the Joint Committee Room in a State legislative facility as well as smaller committee hearing rooms. As provided in the appendix note, it is not the intention of the Board to require permanently installed assistive listening systems in conference rooms restricted to use by employees, consultants and other invited guests. Nor is it the Board's intention to require such systems in a space which is only occasionally or sporadically used for legislative or regulatory business such as a town meeting held in a high school cafeteria. However, the note references the Department of Justice's title II regulations which require effective communication to be provided. See A11.9(2). This may entail use of a portable assistive listening system.

Question 37: Is the proposed requirement for permanently installed assistive listening systems appropriate to meet the needs of persons with hearing impairments in judicial, legislative and regulatory facilities? What are the costs associated with providing permanently installed assistive listening systems in all courtrooms, chambers, and hearing or meeting rooms designated for public use?

During its initial rulemaking, the Board requested comment regarding which types of assistive listening systems (induction loop, FM, infra red) work best in particular environments. Each of the three types of systems received some support for all applications. Many commenters described their personal experiences

with particular types of systems. Those who provided extensive information on the advantages and disadvantages of the various systems recommended that a specific type should be selected only after consultation with experts in the field. The appendix contains additional information at A4.33.6 (Assembly Areas: Placement of Listening Systems) on the various types of assistive listening systems. As in ADAAG 4.1.3(19)(b) (Assembly Areas), the Board is not mandating a specific type of assistive listening system for judicial, legislative or regulatory facilities. However, the Board suggests that in choosing the most appropriate assistive listening system, due consideration be given to the confidentiality constraints discussed in proposed ADAAG 11.8.

Paragraph (3) requires that the minimum number of receivers shall be 4 percent of the occupant load of each covered room, as determined by applicable State or local codes, but not less than two, whichever is greater. As with ADAAG 4.1.3(19)(b) (Assistive Listening Systems), the 4 percent figure is based on a Bureau of the Census estimate of the number of persons aged 15 and over who have difficulty hearing what is said in a normal conversation with another person, excluding those who cannot hear at all. See "Bureau of Census, Disability Functional Limitation and Insurance Coverage" (1984–85). ADAAG 4.1.3(19)(b) (Assistive Listening Systems) requires that the minimum number of receivers to be provided shall be equal to 4 percent of the total number of fixed seats. As these facilities may not have fixed seats, the requirement for 4 percent receivers is based on the occupant load of the room rather than the number of fixed seats.

Paragraph (4) requires that an information sign be posted in a prominent place indicating the availability of assistive listening systems, computer-aided transcription systems, or other equipment to provide information and services to persons with vision or hearing impairments. This provision is consistent with ADAAG 4.1.3(16)(b) (Building Signage) and ADAAG 4.1.3(19)(b) (Assembly Areas) and specifies technical provisions relevant to informational signs. The Board recommends that the signage also indicate the location of such systems and equipment.

12. Detention and Correctional Facilities

During the initial rulemaking, the Board requested information on various State and local government facilities, including detention and correctional facilities. See 56 FR 2296 (January 26, 1991). Specifically, the Board sought information regarding the number of cells that should be made accessible. Commenters took the position that correctional facilities should be accessible but were divided over the number or percentage of cells that should be accessible. These comments are further discussed in proposed ADAAG 12.4. Since the Board has received limited information concerning the need for accessible cells in detention and correctional facilities, those sections concerning the percentage of accessible cells are reserved in this NPRM. However, the Board intends to specify a minimum number or percentage in the final guidelines.

Question 38: The Board seeks additional information or survey results of the number of persons with disabilities housed in detention and correctional facilities.

During the initial rulemaking, commenters also addressed concerns about security considerations in relation to certain elements of accessibility, such as grab bars, which, if loosened and removed from walls, could be used as weapons. This issue is further discussed in proposed ADAAG 12.5.

12.1 General

This section applies to those detention facilities where persons apprehended or arrested for alleged violations of law are temporarily detained and to correctional facilities where persons convicted and sentenced for such violations are housed. This section covers facilities that contain holding facilities such as police stations and sheriff's offices, and facilities housing persons for security reasons, including jails, prisons, reformatories, and juvenile detention centers. This section contains specific requirements for accessible cells or rooms and access to non-contact visiting areas. Other areas, including all public and common use areas, are subject to applicable requirements contained in ADAAG 4.1 through 4.35. An appendix note addresses common use areas that serve only a limited number of housing cells or rooms, such as dayrooms, which are provided in proximity to a particular cluster or group of cells. In this situation, not all dayrooms would have to be accessible, but only those serving accessible cells or rooms.

Question 39: The Board seeks comments on the application of "common use areas" to detention and correctional facilities. Specifically, is additional clarification needed in regard to the areas considered to be common use areas and thus required to be accessible? Further, are there other areas not specifically listed in the appendix that should be addressed?

ADAAG 5 through 9 also apply to detention and correctional facilities. For example cafeterias would have to comply with the applicable provisions of ADAAG 5 (Restaurants and Cafeterias).

In some cases, individuals are sentenced to institutional facilities for persons with mental illness instead of prisons due to reasons of insanity or determined mental disorders. While this section covers "other institutional occupancies where the occupants are under some degree of restraint or restriction for security reasons," mental institutions have not been specifically referenced.

Question 40: Should mental institutions, such as those for the criminally insane, be specifically addressed by this section or are these types of occupancies more appropriately addressed by ADAAG 6 (Medical Care Facilities)? Where possible, responses should include information about the procedures used by a State or locality in committing individuals to these types of facilities.

12.2 Entrances

12.2.1 Secured Entrances

12.2.2 Security Systems

Detention and correctional facilities typically provide secured entrances used only by inmates and security personnel and not the public. ADAAG 4.1.3(8) does not address secured entrances but only public entrances. Consequently, proposed ADAAG 12.2.1 (Secured Entrances) would require at least one secured entrance to be accessible. Since inmates are required to use such entrances, it is essential that at least one be accessible in order to ensure an accessible secured route into the facility for inmates. This requirement would be in addition to those public entrances required to be accessible by ADAAG 4.1.3(8).

Question 41: The Board seeks information on the new construction cost of providing one accessible secured entrance in addition to those public entrances required to be accessible by ADAAG 4.1.3(8).

Proposed ADAAG 12.2.2 (Security Systems) addresses security systems, such as metal detectors, which the public is required to pass through when visiting the facility. According to this provision, which is similar to a requirement in proposed ADAAG 11 (Judicial, Legislative, and Regulatory Facilities), if security systems are provided at public entrances, an accessible route either through or

around the device shall be provided. The Board does not intend this requirement to conflict with any security or screening procedures employed by the operators of detention or correctional facilities.

Question 42: Are there any existing security or screening procedures which could not be effectively carried out under the requirement for an accessible route through or around security systems?

12.3 Visiting Areas

This section addresses visiting areas where inmates are separated from visitors. These requirements are identical to those proposed in ADAAG 11.4.3 (Visiting Areas) for similar areas in judicial facilities and are discussed in that section. This requirement would pertain to all non-contact visiting areas provided in a detention or correctional facility where the elements addressed are provided.

Non-contact visiting areas are commonly provided in detention and correctional facilities, especially at higher security levels. Family and legal visits, which are very important for both inmates, family members, and lawyers, frequently occur in non-contact booths. Non-contact visiting areas are intended to provide increased comfort and privacy to both categories of users. The "Small Jail Design Guide," prepared by the National Institute of Corrections in 1988 found that only six percent of the facilities surveyed did not provide any non-contact visiting space and recommended counter surfaces in booths for leaning or writing, with sufficient dimension to allow access by inmates or visitors with disabilities. ("Small Jail Design Guide" 4–132, 4–133).

12.4 Holding and Housing Cells or Rooms: Minimum Number

12.4.1 Holding Cells and General Housing Cells or Rooms [Reserved]

This section is reserved for specifying the minimum number or percentage of required accessible cells. UFAS 4.1.4(9)(c) requires that five percent of the available residential units, but not less than one, be accessible. During the initial rulemaking, the Board requested comment on the experience of detention and correctional facilities in meeting this requirement. The response to this question was mixed. A slight majority of the comments favored a requirement of five percent but other commenters considered it excessive. Some commenters suggested a ten percent requirement, and others recommended a two percent requirement or a one percent requirement. Only one commenter, from the State of New Mexico property control division, provided information relating to the number of individuals with disabilities who are in detention facilities, estimating that two to three percent of the population in the prison system is permanently or temporarily disabled.

In addition to UFAS, several State codes, including Delaware, Illinois, and North Carolina's, currently require five percent or at least one, whichever is greater, of cells to be accessible. Other States, including California and New York, require a minimum of one detention cell or holding area. Some State codes, including Michigan and Florida, contain scoping requirements that pertain only to accessible toilet facilities serving cells, not housing or holding cells.

The Federal Bureau of Prisons (Bureau) conducted an informal survey of prisons under its jurisdiction, which are subject to the Architectural Barriers Act and section 504 of the Rehabilitation Act. According to this survey, less than one percent of the Federal prison population was identified as having a permanent disability or needing special housing accommodations. Given these initial results, the staff at the Bureau has informally stated that no more than one to two percent of the cells under the jurisdiction of the Bureau need to be accessible. The basis for identifying persons with disabilities that was used in this survey has not been determined.

The Board intends to specify a minimum number or percentage of accessible cells or rooms as part of this rulemaking. These cells or rooms would be subject to the requirements of proposed ADAAG 12.5.

Question 43: The Board requests comments on the number or percentage of housing cells or rooms that should be made accessible. In particular, the Board is interested in any information or survey results on the percentage of inmates with disabilities in State or local prisons and jails. Are there any instances where an inmate with a disability is housed in other areas of the prison or jail (e.g., infirmaries), instead of among the general population due to the fact than an accessible cell or room is not available? Are there any instances when a person with a disability is sentenced to locations other than a prison or jail (e.g., halfway house), due to the lack of an accessible cell or room? If so, what is the frequency of either of these practices? Responses should include, if possible, the working definition of "disability" used for purposes of the survey and a breakdown of the number of persons with mobility impairments and the number of persons with hearing impairments identified by the survey. Further, any available information on the cost impact in new construction of providing cells or rooms that are accessible as specified in proposed ADAAG 12.5 is also requested.

Various types or categories of housing are usually found in detention and correctional facilities. These different types include minimum, medium, and maximum security; work release; and trustee. Housing for male and female inmates, and juveniles is typically segregated. The Board is considering a requirement that accessible cells or rooms be dispersed among the various types or categories of housing provided at the facility. This would ensure that all available types of housing cells or rooms are accessible to persons with disabilities. Under such a requirement, a facility that provided minimum and maximum security housing for both men and women, would have to provide accessible cells in both the male minimum and maximum housing units and the female minimum housing units.

The Board understands that the safety of inmates or detainees with disabilities may be at greater risk in some prison environments. Consequently, some prison operators may house inmates or detainees with disabilities in safer areas of the facility. For example, an inmate with a disability may be housed in a medical facility or other area in the facility where violence may occur less frequently instead of a regular housing unit. Further, such a policy may also be based on a presumption that some individuals with disabilities may pose less of a security risk.

Question 44: Are inmates with disabilities generally at greater risk than other inmates? Do inmates with disabilities present less of a security risk? If so, should this section include an exception providing that accessible cells do not need to be dispersed among all categories of housing? Should this exception apply only to maximum security areas and facilities or are there other areas where inmates or detainees with disabilities are particularly at risk?

In addition to requiring cells to be dispersed among different categories of housing, the Board is considering whether accessible cells should be required to be dispersed within a category of housing. For example, if minimum security housing is provided in three housing units, and three accessible cells are required in that category of housing, an accessible cell would have to be provided in each of the three units. The Board recognizes,

however, that there may be certain security or safety factors that would justify grouping accessible cells or rooms in one area or building, such as in the case of emergency evacuation.

Question 45: Should accessible cells or rooms be required to be dispersed throughout housing units or buildings? If so, should an exception be added based on any security or safety considerations? Commenters should explain in detail specific safety or security considerations upon which such an exception might be based. In addition, the Board requests information on the design and cost impact of providing dispersed, as opposed to grouped or clustered, accessible cells or rooms in new construction.

Correctional facilities are sometimes designed with "shift areas" which are housing areas that can serve different security needs according to the current prison population. For example, a housing area intended for minimum security inmates might be designed and constructed so that it can easily be converted into a medium security housing area when needed. The Board believes that placement of accessible cells in these areas would provide greater flexibility in accommodating inmates with disabilities. An appendix note recommends that consideration be given to the placement of accessible cells in such areas. See A12.4.1.

12.4.2 Special Holding and Housing Cells or Rooms [Reserved]

In addition to general housing, detention and correctional facilities often provide housing units that serve special purposes and house inmates or detainees for shorter periods of time. These special types include cells or rooms used for disciplinary detention, protective custody, medical isolation, detoxification, and suicidal inmates or detainees. Since inmates with disabilities might require or necessitate the services provided in these facilities, the Board believes it is essential that some of each type be accessible. The Board is considering such a requirement and a minimum number or percentage has been reserved in proposed ADAAG 12.4.2.

Question 46: Should special housing cells or rooms be held to the same scoping requirement as general categories of housing cells or rooms or should the scoping requirement be different? Further, should each type of special housing cell or room be accessible or could one or a limited number of cells or rooms be accessible and serve as different types of special housing? For example, could a single accessible cell be used for either protective custody, medical isolation, or detoxification? What effect would this have on access to the services provided by special facilities? Where possible, commenters should include cost information.

12.4.3 Accessible Cells or Rooms for Persons with Hearing Impairments [Reserved]

This section reserves a requirement for a minimum number of cells or rooms that are accessible to persons with hearing impairments. The Board intends to require in the final rule that a certain number or percentage of cells or rooms be accessible to persons with hearing impairments according to requirements in proposed ADAAG 12.6. Accessibility requirements for persons with hearing impairments apply only to cells where certain elements such as permanently installed phones are provided in cells or rooms. (See proposed ADAAG 12.6). Generally, most correctional facilities do not provide these kinds of elements in cells, but some facility types, such as minimum security prisons, may in fact be equipped with such devices. If permanently installed phones are provided in one category of housing, the minimum number or percentage, if specified, would be based on the total number of cells or rooms provided within that category of housing, not on the total number of cells or rooms of the facility.

ADAAG 9.1.3 (Transient Lodging: Sleeping Accommodations for Persons with Hearing Impairments) requires that one of every 25 sleeping rooms be accessible to persons with hearing impairments. This scoping requirement was based in part on demographic information from the Bureau of Census indicating that 7,213,000 individuals (slightly more than 4 percent of the total population aged 15 or older) have difficulty hearing what is said in a normal conversation with another person. This figure does not include those who cannot hear at all. Bureau of Census, Disability Functional Limitation and Insurance Coverage: 1984–85. Other studies indicate that this percentage may in fact be greater. The National Center for Health Statistics determined that 7.9 percent of the population has a hearing impairment. National Health Interview Survey 1979–80. Further, an analysis of demographic data indicates that there are at least as many persons with hearing impairments as there are persons with mobility impairments. Although the Board had originally proposed requiring additional sleeping rooms in transient lodging to be accessible to persons with hearing impairments equal to the number which are totally accessible, this number was slightly reduced based on statistical data on travelers with hearing impairments provided by commenters during the initial rulemaking.

Question 47: The Board requests information on the percentage of persons with hearing impairments in detention or correctional facilities.

12.4.4 Medical Care Facilities

This section provides that if medical facilities with cells or rooms for patients are provided, an accessible number [percentage specified for new construction] of those cells or rooms shall comply with ADAAG 6 (Medical Care Facilities). Facilities providing medical treatment or care are required to comply only if persons may need assistance in emergencies and the period of stay may exceed twenty-four hours. These cells or rooms would be required to be accessible in addition to the number of general and special housing cells or rooms required to be accessible. This provision is intended to address the same range of medical facilities in accordance with the scoping requirements in ADAAG 6.1 (Medical Care Facilities; General) that are part of a detention or correctional facility. For example, if a prison contained a detoxification facility, 10 percent of the patient bedrooms would have to be accessible according to ADAAG 6.1(1). Other medical areas that do not meet this definition (e.g., that do not provide overnight stay for patients) would be required to be accessible to the extent required for common use areas. Thus, a medical clinic that did not have patient bedrooms would have to be accessible according to the requirements of ADAAG 4, which address public and common use areas.

Question 48: Is further clarification needed on the types of medical facilities addressed by this provision? Are there other kinds of medical facilities provided in detention or correctional facilities that are not clearly addressed by those covered by ADAAG 6?

Question 49: Proposed ADAAG 12.4.2 will address special housing cells and rooms, which may include those provided for medical isolation. If a correctional facility contains a medical unit subject to proposed ADAAG 12.4.4 which provides medical isolation cells, should such cells be counted as part of the percentage of patient bedrooms required to be accessible or should accessible isolation cells be required in addition to accessible patient bedrooms?

12.4.5 Alterations to Cells or Rooms

Since correctional and detention facilities are usually built to have long

life-spans, the Board has proposed a scoping provision for the alteration of cells. This provision requires that the number or percentage of cells which must be made accessible as part of the alteration, be based on the total number of rooms altered, not the total number of cells in the facility. This requirement would be in effect for each future alteration undertaken until the total number of accessible cells required for new construction was achieved. This provision is generally consistent with similar requirements in ADAAG 9 (Accessible Transient Lodging).

12.5 Requirements for Accessible Cells or Rooms

12.5.1 General

12.5.2 Minimum Requirements

This section outlines the minimum requirements for accessible cells or rooms. These requirements are based in part on specifications in ADAAG 9 for rooms in transient lodging. In proposing these requirements, the Board has taken into account various security considerations which have been discussed in proposed ADAAG 11.4 (Courthouse Holding Facilities). These issues, which are also applicable to detention and correctional facilities, include the possible security and suicide risks of grab bars, as well as the accessibility of combined watercloset and lavatory units which are a standard feature of prison cell design. [See questions 30, 31 and 32]. As noted in the beginning of this section, the Board received several comments during the initial rulemaking expressing concern about grab bars which could be loosened from the walls and used as weapons. The Board seeks information on grab bars, but notes that removal of grab bars is dependent primarily on the securement and structural strength of grab bars. ADAAG 4.26 (Handrails, Grab bars, and Tub and Shower Seats) provides minimum criteria for grab bars and handrails but does not limit their structural strength or level of securement.

Question 50: The Board requests information on any conflicts (in addition to those raised in the questions noted above) between these proposed guidelines and any security requirements inherent in the design of detention or correctional facilities. Commenters should specify both the relevant section of the guidelines and the security design requirement of feature with which it conflicts.

This section requires that accessible cells or rooms and the elements or spaces serving them must be on an accessible route. It also requires that the same common areas, amenities, spaces, and elements serving other cells or rooms in the same type of housing be accessible. For example, if dayrooms or recreation facilities are available to occupants of a medium security housing unit, then such areas must be accessible and connected by an accessible route to accessible cells or rooms within the unit. These requirements would apply either to elements provided within accessible cells or rooms or those elements that may be provided in other areas but that serve accessible cells or rooms.

Paragraphs (1) through (6) are similar to provisions previously discussed under proposed ADAAG 11.4 (Courthouse Holding Facilities). Paragraph (5) requires fixed or built-in seating and tables to be accessible according to the general scoping requirement in ADAAG 4.1.3(18), which requires five percent, but not less than one, of the fixed or built-in seating or tables to be accessible according to ADAAG 4.32 (Fixed or Built-in Seating and Tables). This requirement would apply to fixed or built-in seating or tables provided within the accessible cells and those areas where such seating or tables are provided in other areas directly serving accessible cells, such as a dayrooms. Other public or common use areas serving the facility in general, such as exercise yards, vocational or instructional areas, and visiting areas, are subject to the requirements of ADAAG 4.1 through 4.35.

Paragraphs (7) and (8), which are based on requirements in ADAAG 9 for transient lodging, contain requirements pertinent to elements found primarily in housing, as opposed to holding cells or rooms. Paragraph (7) requires accessible fixed or built-in storage facilities, and paragraph (8) specifies that controls and operating mechanisms operated by inmates must be accessible.

Under paragraph (9), cells required to be accessible must also provide accommodations for persons with hearing impairments. This provision is based on a similar requirement for transient lodging in ADAAG 9.2 (Requirements for Accessible Units, Sleeping Rooms and Suites) which requires rooms accessible to persons with mobility impairments to also be accessible to persons with hearing impairments. This provision was included under transient lodging facilities so that persons with both mobility and hearing impairments could be accommodated.

Question 51: Is the requirement in paragraph (9) for accommodations for persons with hearing impairments appropriate or necessary with respect to detention or correctional facilities?

12.6 Visual Alarms and Telephones

12.6.1 General

12.6.2 Equivalent Facilitation

This section addresses the accommodation of inmates with hearing impairments and is derived from requirements for transient lodging in ADAAG 9.3 (Visual Alarms, Notification Devices and Telephones). The requirement for a visual alarm pertains only to those cells or rooms served by audible emergency alarms and from which inmates may evacuate independently. The term "audible emergency alarm" is intended to apply only to systems used to alert occupants of the cell or room of emergencies such as fire and would pertain to systems used only to notify security personnel, such as in cases of inmate escape or riot. Where inmates are evacuated from housing cells or rooms by security personnel, this requirement would not apply even if an emergency warning system is provided. Permanently installed telephones are required to have volume controls.

The equivalent facilitation provision in proposed ADAAG 12.6.2 allows use of portable devices in lieu of permanent ones as long as the cell or room has appropriate electrical wiring for the use of such devices. This section is consistent with a similar provision in ADAAG 9 for accessible transient lodging.

13. Accessible Residential Housing

Title II of the ADA covers all State and local government programs, services, and newly constructed facilities, including residential housing. Examples of housing covered under title II include, but are not limited to, public housing projects and apartments and official residences, such as those provided for governors or State university presidents. Proposed ADAAG 13 (Accessible Residential Housing) outlines minimum requirements for these residential facilities.

In proposing these requirements, the Board took into consideration existing Federal laws and regulations pertaining to residential facilities in the public sector. Specifically, these include section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Fair Housing Amendments Act of 1988 (Fair Housing Act) (42 U.S.C. 3604 *et seq.*), and regulations issued pursuant to both of these laws. Many residential facilities owned or operated by State governments are subject to both section

504 of the Rehabilitation Act and the Fair Housing Act.

Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability in Federally funded programs and services. The Department of Housing and Urban Development (HUD) has issued regulations implementing section 504 as it applies to housing and other programs and services which receive HUD assistance. (See 24 CFR part 8). HUD's regulations implementing section 504 reference UFAS (24 CFR 8.32). In new construction and substantial alterations, UFAS 4.1.4(11) requires five percent of the dwelling units to be accessible according to the requirements in UFAS 4.34. HUD's section 504 regulations also require that two percent of the dwelling units be accessible to persons with hearing impairments and persons with vision impairments. (See 24 CFR 8.22).

The Fair Housing Act prohibits discrimination on the basis of disability in multifamily housing and requires that new multifamily housing units be adaptable to the access needs of persons with disabilities. Section 804(f)(3)(C) of the Act requires covered multifamily dwellings to be designed and constructed in accordance with certain accessibility requirements. (See 56 FR 9473). Pursuant to this Act, HUD issued the Fair Housing Accessibility Guidelines which contain minimum requirements for adaptability in multifamily dwelling units containing four or more units. (See 24 CFR 100.205). Title II of the ADA applies to State and local government facilities containing dwelling units without respect to the number of dwelling units. Thus, coverage of title II of the ADA and the Fair Housing Act overlap.

This section outlines requirements for accessible dwelling units which are based, with modification, on requirements in UFAS 4.34 for dwelling units. Additionally, the Board has sought to ensure that these requirements do not conflict with the minimum requirements of the Fair Housing Accessibility Guidelines for adaptable dwelling units. Except as otherwise provided in this section, all public and common use areas are subject to ADAAG 4.1 through 4.35. This provision is consistent with the Fair Housing Accessibility Guidelines which require all public and common use areas to be accessible in buildings covered by the Fair Housing Act. This would include those public and common use areas provided on upper or lower floors of facilities that do not contain elevators. In requiring this provision, the Board notes that the absence of an elevator is not a barrier to all individuals with disabilities. The guidelines include requirements for access for persons with hearing impairments and persons with vision impairments. Further, some individuals with mobility impairments, such as those using crutches or braces, may be able to use stairs to access other floors. The Board also notes that an elevator may be installed at a future date, or an addition to a building or a second building which is later connected may include an elevator. Furthermore, the legislative history of the ADA states that the exception for elevators in certain private sector facilities "does not obviate or limit in any way the obligation to comply with the other accessibility requirements established by this legislation, including requirements applicable to floors which, pursuant to the exception, are not served by an elevator." H. Rept. 101–485, pt. 2 at 114.

An exception has been included for public or common use areas that serve a recreational purpose. Under this exception, where multiple recreational facilities, such as tennis courts, are provided, at least one of each type must be accessible. This is consistent with the Fair Housing Accessibility Guidelines which state: "Where multiple recreational facilities (e.g., tennis courts) are provided, sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps" is required. (24 CFR Ch. 1, App. II, sec. 5, req. 2).

This section defines "public use areas" and "common use areas." "Public use area" is defined according to the definition in ADAAG 3.5. The definition of "common use area" is consistent with the definition in ADAAG 3.5, but is more specific to residential facilities covered by this section. This definition of "common use areas" is derived from the Fair Housing Accessibility Guidelines and applies to rooms, spaces or elements used by residents or their guests, such as hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings. (24 CFR Ch. 1, App. II, sec. 2).

13.1 General

Proposed ADAAG 13.1 outlines the types of residential facilities addressed by the section. These facilities include single family and multifamily dwelling units constructed or altered by, or on behalf of, a State or local government entity. The definition of "dwelling unit" in this section is derived from the definition previously included in ADAAG 3.5 (Definitions). The definition has been incorporated here and revised to apply only to residential housing and not transient lodging since this term is used only in this section and not in ADAAG 9 (Accessible Transient Lodging).

The term "dwelling unit" as used in ADAAG 13 specifically applies only to those facilities used as a residence which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, and sleeping. Examples include public housing projects and apartments and official residences. Proposed appendix note A13.1 discusses certain characteristics that distinguish residential dwelling units addressed by this section from those considered transient lodging. Specifically, residential dwelling units contain full accommodations, including kitchens, bathrooms, living and sleeping areas. Often, all of these spaces are not provided within units which are used on a transient basis.

Question 52: UFAS 4.1.4(2)(a) provides for a military exclusion for residential housing for unaccompanied military personnel, when their job descriptions cannot be filled by persons with disabilities. The Board has not included such an exemption in the proposed guidelines but seeks comment on whether such an exemption is appropriate under title II of the ADA. For example, should this section exclude unaccompanied military housing located within a State National Guard facility? Are there other types of residential housing which should be exempted from this section? Responses should include discussion of the justification upon which any recommended exemption might be based.

13.2 Minimum Number and Dispersion

13.2.1 New Construction: Minimum Number

Proposed ADAAG 13.2.1(2) requires two percent, but not less than one, of the total number of dwelling units to be accessible to persons with hearing impairments, as well as to persons with visual impairments. Thus, five percent of the dwelling units are required to be accessible to persons with mobility impairments as well as persons with hearing or visual impairments and an additional two percent of the dwelling units (seven percent total) are required to be accessible to persons with hearing or visual impairments. In developing the requirements of proposed ADAAG 13.2.1 (1) and (2), the Board considered HUD's section 504 regulation, its Fair

Housing Accessibility Guidelines, and existing provisions in ADAAG, as discussed below.

HUD's section 504 regulations reference UFAS. UFAS 4.1.4(11)(b) requires that five percent of the dwelling units be accessible for persons with mobility impairments. HUD's section 504 regulation also requires that an additional two percent of the dwelling units be "accessible for persons with hearing or vision impairments." See 24 CFR 8.22.

The Fair Housing Act requires that all dwelling units in elevator buildings and all ground floor dwelling units in non-elevator buildings be adaptable. It does not require that any dwelling unit be fully accessible by design or construction. In general, adaptable dwelling units, as defined by HUD, allow for certain elements, such as grab bars, to be provided by the tenant.

Consequently, housing facilities subject to both HUD's section 504 regulations and its Fair Housing Accessibility Guidelines must be constructed so that five percent of the dwelling units are accessible for persons with mobility impairments, two percent are accessible to persons with hearing or visual impairments, and 100 percent of the dwelling units in elevator or 100 percent of the ground floor dwelling units in non-elevator buildings are adaptable. The requirement in proposed ADAAG 13.2.1(1) that a percentage of the dwelling units be accessible for persons with mobility impairments and the requirement in 13.2.1(2) that a percentage of the dwelling units be accessible to persons with hearing and visual impairments are derived from HUD's section 504 regulations.

ADAAG 9 (Accessible Transient Lodging) contains scoping requirements for accessible transient lodging in the form of a chart. The first chart, at ADAAG 9.1.2, contains requirements for the minimum number of accessible rooms. These rooms must be accessible to persons with mobility impairments according to the requirements in ADAAG 9.2 and contain accommodations for persons with hearing impairments according to the requirements in ADAAG 9.3. In addition, it also specifies a number of accessible rooms with roll-in showers. These requirements are to be satisfied independently. For example, a facility containing between 76 and 100 rooms must have a total of five accessible rooms, one of which must be equipped with a roll-in shower.

The second chart, at ADAAG 9.1.3, specifies a minimum number of rooms that must provide accommodations for persons with hearing impairments only. This number is in addition to those required to be accessible in the first chart. The requirement is based on the total number of rooms provided and ranges from two percent to four percent.

The requirement in ADAAG 13.2.1(1) that five percent of dwelling units required to be accessible also be accessible to persons with hearing or visual impairments is based in part on existing requirements for transient lodging in ADAAG 9.

While proposed ADAAG 13.2 does not require any percentage of dwelling units to be adaptable, it does not conflict with the Fair Housing Accessibility Guidelines and may facilitate compliance with the Fair Housing Accessibility Guidelines by ensuring a certain level of access in new construction and reducing the need for future adaptability.

Proposed ADAAG 13.2.1(1)(a) reserves the requirement that a certain number of accessible dwelling units provide roll-in showers. In the final guidelines, the Board intends to provide scoping for the number of dwelling units required to provide roll-in showers. Such a provision would be similar to the requirement in ADAAG 9 (Accessible Transient Lodging). In ADAAG 9, a roll-in shower stall is required in certain accessible sleeping rooms on a sliding scale according to the table in ADAAG 9.1.2. (Accessible Units, Sleeping Rooms, and Suites). According to this table, transient lodging facilities with more than fifty rooms must have roll-in showers in one to two percent of the rooms.

The roll-in showers required by these provisions are shown in Figure 57 (a) and (b) and differ from the accessible shower stalls in ADAAG 4.21 (Shower Stalls). ADAAG 4.21 allows use of a 36 inch by 36 inch transfer shower stall or a larger roll-in shower stall at least 30 inches by 60 inches. The requirement for roll-in showers was based on comments received in response to the initial rulemaking.

Question 53: What percentage of the accessible residential dwelling units should contain roll-in showers? Where possible, responses should include information on the benefits, as well as estimates on the cost and design impact, of providing roll-in shower stalls in residential dwelling units.

With respect to transient lodging, accessible rooms with roll-in showers are required only in facilities with over 50 rooms. Given the trend toward integrating a number of smaller public housing facilities within communities, as opposed to providing large isolated facilities comprised of a greater number of units, the Board is concerned that State and local government entities may not construct residential facilities that trigger the requirement for roll-in showers.

Question 54: Should the requirement for roll-in showers parallel that for transient lodging in ADAAG 9.1.2 which applies only to facilities with over 50 units or should it apply to smaller residential facilities? If so, how many dwelling units should a facility contain to trigger the requirement for roll-in showers.

Proposed ADAAG 13.2.1(1)(b) reserves the requirement for a minimum number of dwelling units with bathtubs. Persons with certain disabilities, such as severe arthritis, may have greater need for bathtubs than showers for therapeutic reasons. Consequently, the Board is considering requiring that a portion of accessible dwelling units contain accessible bathtubs.

Question 55: Should a provision for bathtubs complying with ADAAG 4.20 be included in 13.2.1(1)? If so, what portion of a facility's accessible units should contain such bathtubs? How many dwelling units should a facility contain to trigger the requirements for bathtubs complying with ADAAG 4.20?

As stated in proposed ADAAG 13.2.1(3), these requirements are not intended to increase the total number of dwelling units planned for a facility. If a facility contains only one dwelling unit, both scoping requirements could be met by making that unit accessible for persons with mobility impairments, as well as for persons with hearing and visual impairments.

Question 56: The Board seeks comment on whether the percentages specified in proposed ADAAG 13.2.1 (1) and (2) provide for an appropriate level of accessibility in residential facilities. In particular, the Board is interested in any information or survey results on the need for accessible units in existing residential facilities which are owned or operated by public entities. Public entities that have followed the UFAS scoping requirements are encouraged to comment on their experiences in providing this level of access. Responses should include, where possible, any available cost estimates or data.

The scoping percentages in proposed ADAAG 13.2.1 (1) and (2) are based on the total number of dwelling units in a facility. The term "facility" in ADAAG, as noted above, would include all buildings on a single site. However, UFAS 4.1.1 (11) requires five percent, or at least one, whichever is greater, of the "total" of Federally owned multi-family and single family dwelling units to be accessible but does not specify whether this means the total number of dwelling

units in a facility or the total number of dwelling units in each building in a facility. With respect to Federally assisted multi-family housing, UFAS bases this percentage on the total "in projects of 15 or more dwelling units, or as determined by the appropriate Federal agency following a local needs assessment conducted by local government bodies or States under applicable regulations." The term "project" is not defined in UFAS. Consequently, the Board sought guidance from HUD's section 504 regulation, which defines the term "project" as: "Project means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site." 24 CFR 8.3.

Basing the minimum number on projects instead of facilities may lead to a decrease in the number of accessible dwelling units required, since projects may include more than one facility or site. For example, in a project that involved construction of three different facilities at different sites each providing 15 dwelling units, a minimum number based on the project total (five percent of 45) would require at least two accessible dwelling units, whereas a minimum number based on each facility total (five percent, but not less than one, of 15) would require three accessible dwelling units.

Question 57: The Board seeks information on whether basing the minimum number on the number of dwelling units in each facility is the most appropriate means of determining an adequate level of accessibility. Should another basis, such as the total number of dwelling units in a project be used? If an alternative is recommended, commenters should state, where possible, the impact the recommendation would have on the minimum number of accessible dwelling units required.

13.2.2 New Construction: Dispersion

Proposed ADAAG 13.2.2 requires that accessible dwelling units be dispersed so as to provide people with disabilities a choice of housing types comparable to and integrated with those available to other members of the public. This section provides that the factors to be considered in dispersing units include unit size and configuration, cost, the amenities provided within or serving dwelling units, and location with respect to amenities. This requirement is based on a similar provision for transient lodging in ADAAG 9.1.4 (Classes of Sleeping Accommodations). The Department of Justice regulations implementing title II of the ADA provide that a public entity may not "afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others". See 28 CFR 35.130(b)(1)(ii).

In addition, accessible dwelling units cannot be grouped or clustered but must be dispersed so that they are integrated within the facility. The principle of integration underlies the ADA as evidenced in the legislative history:

> As with Section 504 of the Rehabilitation Act, integrated services are essential to accomplishing the purposes of Title II. As stated by Judge Mansmann in *ADAPT* v. *Skinner*, "the goal [is to] eradicat[e] the 'invisibility of the handicapped'." Separate-but-equal services do not accomplish this central goal and should be rejected.
>
> The fact that it is more convenient, either administratively or fiscally, to provide services in a segregated manner, does not constitute a valid justification for separate or different services under Section 504 of the Rehabilitation Act, or under this title. Nor is the fact that the separate service is equal to or better than the services offered to others sufficient justification for involuntary different treatment for persons with disabilities * * * (H. Rept. 101–485, Part 3, at 50).

Thus, it is essential that tenants with disabilities are not segregated from the overall facility population. An appendix note clarifies the level of dispersion required by this provision.

Question 58: The Board seeks comment on the factors that constitute an acceptable level of dispersion of accessible units. In particular, the Board seeks comment on whether there are overriding factors which are more significant than a dispersed location for certain types of facilities. For example, should accessible units be located as close as possible to entrances, amenities such as parking, or common use areas such as laundry facilities? Where possible, commenters are asked to provide cost data which takes into consideration that both these guidelines and the Fair Housing Act require all public and common use areas to be accessible.

These proposed guidelines are intended to be consistent with HUD's section 504 regulations, as previously discussed. UFAS 4.1.3(1) provides that all the accessible dwelling units may be located on one accessible level if at least one of each type of common area and amenity provided for use of residents and visitors is available on the accessible level. A similar allowance has not been included in these proposed guidelines because of the requirement for dispersion and integration of accessible dwelling units. Thus, under these proposed guidelines, a low-rise garden style apartment building may need an elevator serving all floors so that accessible dwelling units can be dispersed and integrated.

Question 59: Should the guidelines include an allowance similar to that in UFAS with respect to low-rise structures? Responses should include a discussion of the justification upon which such an allowance would be based and information on the cost impact of providing elevators in low-rise buildings in new construction.

13.2.3 Alterations: Minimum Number and Dispersion

Proposed ADAAG 13.2.3 addresses the alteration of residential dwelling units. Proposed ADAAG 13.2.3(1) provides that the minimum number of dwelling units required to be accessible to persons with mobility, vision and hearing impairments (five percent but not less than one) and the minimum number of dwelling units required to be accessible for persons with hearing or visual impairments (two percent but not less than one) is based on the total number of units being altered. This requirement would remain in effect and apply to subsequent alterations of other units until such time as the total number of accessible dwelling units required for the facility overall was achieved. Appendix note A.13.2.2. provides an illustration of this requirement by illustrating how this might affect a facility undergoing ten alterations in ten consecutive years. This requirement is consistent with similar provisions in ADAAG 6 (Medical Care Facilities) and 9 (Accessible Transient Lodging). Both of these sections cover facilities similar to residential facilities, which are often altered or renovated in phases with only a portion of units or rooms renovated at a time.

Proposed ADAAG 13.2.3(2) takes into account that existing conditions or the scope of the alteration may limit the ability to fully disperse accessible units throughout the facility. This provision only requires altered units that are made accessible to be dispersed to the maximum extent feasible in accordance with ADAAG 13.2.2.

13.3 Requirements for Accessible Dwelling Units

13.3.1 General

Proposed ADAAG 13.3 contains the technical requirements for accessible dwelling units. This section is

consistent with UFAS 4.34 (Dwelling Units) except where discussed below. Specifically, the proposed requirements do not include all the provisions allowing adaptability which are in UFAS 4.34. Under provisions of adaptability, dwelling units may be designed and constructed so that certain elements necessary for accessibility, such as grab bars, can be installed at a later date. The effectiveness of adaptability depends on operational factors which are not within the purview of these guidelines. The Board has sought to ensure a level of accessibility for dwelling units that is consistent with the statutory mandate of the ADA to ensure that buildings and facilities are accessible to persons with disabilities.

In addition to ensuring a minimum level of accessibility as part of the actual design, construction or alteration of publicly owned dwelling units covered under title II of the ADA, these requirements will facilitate compliance with section 504 of the Rehabilitation Act. Further, accessible dwelling units complying with this section will satisfy the requirements in HUD's Fair Housing Act regulations, which require all units to be adaptable.

This section includes requirements for the areas, spaces, and elements of accessible dwelling units (13.3.2), and specific sections on bathrooms (13.3.3), kitchens (13.3.4), and laundry facilities (13.3.5).

13.3.2 Minimum Requirements

Consistent with UFAS 4.34.2, proposed ADAAG 13.3.2 requires accessible dwelling units to be on an accessible route and to provide accessible elements, spaces, and areas complying with paragraphs (1) through (14).

Paragraph (1) applies the requirements of ADAAG 4.1 through 4.35 to those spaces and facilities serving accessible dwelling units. These include entry walks, trash disposal facilities, and mail boxes. The provision applies only where such spaces and facilities are provided.

Paragraph (2) requires wheelchair turning space complying with ADAAG 4.2.3 and ground and floor spaces complying with ADAAG 4.5 in accessible spaces. The UFAS requirement at 4.34.2(2) for wheelchair passing space was not included here since such a requirement could not be met within a dwelling unit. The requirement for wheelchair passing space is applicable to public and common use areas under the accessible route requirements at ADAAG 4.3.4.

Paragraph (3) requires an accessible route complying with ADAAG 4.3 to connect all accessible spaces and elements within accessible dwelling units. A provision has been added clarifying that an elevator is not required within multi-level dwelling units as long as the following accessible elements are provided on an accessible level: one full bathroom; a kitchen; a living room; a dining room; one bedroom in a dwelling unit with one bedroom, or two bedrooms in a dwelling unit with more than two bedrooms; and, where provided, patios, decks, terraces, balconies, carports, garages. This provision is derived from UFAS 4.34.2(15)(c) and there is a similar provision for transient lodging in ADAAG 9.2.2(2).

Paragraph (4)(a) requires an accessible parking space complying with ADAAG 4.6 for each accessible dwelling unit if resident parking is provided. An exception is provided regarding signage for the required accessible parking spaces. Where parking spaces are assigned to specific dwelling units, the parking sign identifying the space as accessible required at ADAAG 4.6.4 is not required to be provided until the dwelling unit is occupied by a resident with a disability. UFAS 4.1.1(5)(d) requires an accessible space for each accessible dwelling unit only where parking is provided for all residents. Where parking is provided for only a portion of residents, the same UFAS provision requires that an accessible space be provided upon the request of the occupants of accessible dwelling units. Since redesigning a parking lot to provide accessible spaces at a later date may be extremely costly, the Board has proposed applying the provision of accessible spaces for each accessible dwelling unit even when parking is provided for only a portion of residents. However, the exception for signage designating the space would allow for the space to be used by persons without disabilities until such time as a tenant with a disability requires the accommodation. Paragraph 4(b) is consistent with UFAS 4.1.1(5)(d) in requiring that where visitor spaces are provided, two percent, but not less than one, are to be accessible.

The Board is considering a requirement for accessible van parking. The Board recognizes that tenants will want to park as close as possible to their units, however, it is impossible to predict which accessible dwelling unit might be occupied by a person having a van. Therefore, the Board is considering requiring every accessible parking space in tenant lots to be van accessible. Universal design which also can be used either by cars or vans is another alternative. A Universal space, as shown in ADAAG A4.6.3, Figure A5(b) is 132 inches wide with a 60 inch access aisle. Spaces designed specifically for vans must be 96 inches wide and have a 96 inch access aisle. When only one space is provided at a location, the van and universal spaces are the same overall size, 192 inches. When spaces are paired, two universal spaces with a shared access aisle measure 324 inches and two van spaces with a shred access aisle measure 288 inches. However, given that accessible dwelling units will be dispersed within a facility, it seems unlikely that spaces will be paired.

Question 60: Should accessible van parking spaces be provided for tenants? If so, should all accessible parking spaces be van accessible or are there other design or scoping solutions? Should the Board specify the universal design parking space or the van accessible type? Responses should include, where possible, cost information.

Paragraph (5) requires that elevators serving accessible dwelling units comply with the requirements for elevators in ADAAG 4.10. This provision is reserved in UFAS. The Board feels that elevators are essential for access in some residential facilities covered by ADAAG13. This requirement would apply to accessible dwelling units provided on the upper floors of a high-rise apartment building. It may also apply to elevators located within a dwelling unit that connects levels required to be accessible. However, under paragraph (3), an elevator would not be required in an accessible dwelling unit if the required accessible spaces are on an accessible level. In providing for equivalent facilitation under paragraph (5)(ii), the Board has taken into consideration the cost and design impact of providing elevators complying with ADAAG 4.10 within accessible dwelling units and has proposed a provision allowing for the installation of a platform lift complying with ADAAG 4.11 to connect levels that are required to be accessible.

Paragraph (6) requires doors provided for passage in and to accessible spaces to comply with ADAAG 4.13. This provision is consistent with the requirements for accessible units in transient lodging in ADAAG 9.2.2(3).

Paragraph (7) requires at least one accessible entrance to the dwelling unit complying with ADAAG 4.14. This requirement is consistent with UFAS 4.34.2(7).

Paragraph (8) addresses storage facilities provided in accessible spaces,

including cabinets, shelves, closets, and drawers; and requires one of each type to be accessible in compliance with ADAAG 4.25. This provision applies to one of each type of storage facility, and is consistent with the general scoping for storage facilities in UFAS 4.1.2(11) and ADAAG 4.1.3(12), as well as a requirement specific to transient lodging in ADAAG 9.2.2(4).

Paragraph (9) requires all controls, including those used in the regular and periodic adjustment of heating, ventilating, and air conditioning, to be accessible in compliance with ADAAG 4.27. An exception provides that this requirement does not apply to controls such as air distribution registers, required to be placed in or close to ceilings for proper air circulation. This provision is consistent with UFAS 4.34.2.(9).

Paragraph (10) requires audible alarms complying with ADAAG 4.28.2 and auxiliary alarms complying with ADAAG 4.28.4 if emergency warning systems are provided. This is consistent with UFAS 4.34.2(10). Otherwise, visual alarms complying with ADAAG 4.28.3 are not required within dwelling units because they are required to be connected to a building central alarm system and currently, many residential facilities are constructed without a central alarm system.

Paragraph (11) requires at least one full bathroom complying with proposed ADAAG 13.3.3, including a water closet, lavatory, and bathtub or shower. This is consistent with UFAS 4.34.2(12).

Paragraph (12) requires kitchens to be accessible in compliance with proposed ADAAG 13.3.4 and is consistent with UFAS 4.34.2(13).

Paragraph (13) requires the following spaces to be accessible and to be on an accessible route: Living areas; dining areas; sleeping areas; and, if provided, patios, terraces, balconies, carports, and garages. This is consistent with UFAS 4.34.2(15). The Board has included an exemption based on ADAAG 9.2.2(6)(d) for transient lodging to allow for a higher threshold at doors on patios, decks, and balconies when it is necessary to protect the integrity of the unit from wind or water damage if equivalent facilitation is provided. Some local building codes require higher door thresholds or a change in the level of balconies to prevent structural damage from water.

Paragraph (14) requires laundry facilities to be accessible in compliance with proposed ADAAG 13.3.5 and is consistent with UFAS 4.34.2(15).

13.3.3 Bathrooms

This section contains requirements for bathrooms and is based on UFAS 4.34.5 with modification. The UFAS requirements for bathrooms are based in part on the concept of adaptability. Under this concept, certain elements necessary for access, such as grab bars, may be installed later instead of as part of new construction. These proposed requirements do not include adaptability in order to ensure full bathroom accessibility in the design and construction of dwelling units. The differences between the proposed requirements and those in UFAS 4.34.5 are further discussed below.

Paragraph (1) prohibits doors from swinging into the clear floor space required for any fixture. This is consistent with UFAS 4.34.5.1. The Board has also applied the requirements for doors in ADAAG 4.13 to doors leading to accessible bathrooms.

Paragraph (2) requires water closets to be accessible in compliance with ADAAG 4.16 and allows a water closet height range of 15 to 19 inches measured to the top of the seat. ADAAG 4.16 includes requirements for a grab bar 36 inches in length behind the water closet and a grab bar 42 inches in length aside the water closet. UFAS 4.34.5.2(3) requires only that bathrooms be designed so that grab bars can be installed as a feature of adaptability. ADAAG 4.16 also contains requirements for toilet paper dispensers similar to those in UFAS 4.34.5.2(4) and requirements for flush controls not included in UFAS 4.34.5.2.

Paragraph (3) requires lavatories and mirrors to be accessible in compliance with ADAAG 4.19. If medicine cabinets are provided, at least one must have a usable shelf no higher than 44 inches and provide clear floor space complying with ADAAG 4.2.4. This provision is consistent with UFAS 4.34.5.3, except that UFAS addresses only those medicine cabinets located above lavatories. The Board expanded this requirement to medicine cabinets not located above the lavatory because such cabinets are often provided elsewhere within accessible bathrooms.

Paragraph (4) requires bathtubs, if provided, to comply with ADAAG 4.20. This provision is consistent with UFAS 4.34.5.4, except that UFAS allows grab bars to be installed under the concept of adaptability.

Paragraph (5) requires shower stalls, if provided, to comply with ADAAG 4.21 and is consistent with UFAS 4.34.5.5. However, ADAAG 4.21 includes requirements for seats in roll-in shower stalls where provided, specifications for curbs, and requirements for grab bars which are not included in UFAS.

Paragraph (6) contains requirements for bathtub and shower enclosures that are derived from UFAS 4.34.5.6.

Paragraph (7) notes that the clear floor space at fixtures and controls may overlap and is based on UFAS 4.34.5.7. The Board has also clarified that those fixtures and controls required in accessible bathrooms shall be on an accessible route.

Paragraph (8) requires a turning space complying with ADAAG 4.2.3 and has been added as a restatement of a similar requirement in proposed ADAAG 13.3.2(2) which is consistent with UFAS 4.34.2(2).

13.3.4 Kitchens

This section contains requirements for accessible kitchens, which are required to be located on an accessible route. In general, this section is consistent with UFAS 4.34.6. However, where UFAS allows certain elements to be either accessible or adaptable, this proposed section requires full accessibility and does not address adaptability. Differences between these requirements and those of UFAS are further discussed below.

Paragraph (1) provides for minimum clearances between all opposing base cabinets, counter tops, appliances, or walls. This provision is identical to UFAS 4.34.6.1.

Paragraph (2) provides for clear floor space of at least 30 by 48 inches at all appliances in the kitchen, including the range or cooktop, oven, refrigerator/freezer, dishwasher, and trash compactor. Clear floor spaces must comply with ADAAG 4.2.4 and allow for either a forward or a parallel approach. Laundry equipment provided in the kitchen must comply with proposed ADAAG 13.3.5. All of the above requirements are the same as those in UFAS 4.34.6.2. A clarifying provision has been added requiring maneuvering space complying with ADAAG 4.2.3. UFAS 4.34.2(2) and proposed ADAAG 13.3.2(2) require that accessible spaces shall have maneuvering spaces complying with 4.2.3 in UFAS or ADAAG.

Paragraph (3) requires that all controls in the kitchen comply with ADAAG 4.27. This provision is identical to UFAS 4.34.5.3.

Paragraph (4), like UFAS 4.34.5.4, requires that at least one 30 inch section of counter provide an accessible work surface. Paragraph (4)(a) allows the accessible work surface to be either adjustable or mounted at a fixed height and is similar to UFAS 4.34.6.4(1). However, consistent with ADAAG

4.32.4, the proposed requirement provides a range of height for fixed counters from 28 to 34 inches whereas UFAS requires a counter height of 34 inches maximum. Paragraph (4)(b) requires that counter thickness and supporting structure be 2 inches maximum over the required knee clearance and is consistent with UFAS 4.34.6.4(3). Paragraph (4)(c) requires a clear floor space at the accessible work surface of 30 by 48 inches, and provides for a forward approach. This provision limits the amount of clear floor space that may be provided under the work surface to 19 inches, and specifies that knee space must be 30 inches wide and 19 inches deep. This section is consistent with UFAS 4.34.6.4(4).

Paragraph (4)(d) requires that there shall be no sharp or abrasive surfaces under work surfaces and is consistent with UFAS 4.34.6.4(5).

The provision in UFAS 4.34.6.4(2), which allows use of removable base cabinets, has not been included because those adaptable features that may obstruct accessible elements are not included in this section.

Paragraph (5) requires that the sink and surrounding counter comply with ADAAG 4.24. With respect to mounting height, this paragraph is consistent with UFAS 4.34.6.5(1) in that it allows for the sink to be capable of being adjusted to alternative heights. However, while UFAS requires that the sink be capable of being mounted at 28, 32, and 36 inches, this section requires that an adjustable sink be capable of being mounted at 28, 32, 34, and 36 inches. This action has been taken to provide consistency with the requirements for a fixed sink and it takes into consideration the clearances required for a sink with a 6½ inch deep bowl while maintaining the required knee clearances. ADAAG 4.24 contains provisions which are consistent with UFAS 4.34.6.5 with regard to minimum knee clearances, the depth of the sink, clear floor space, protection from exposed pipes, faucet controls and rough-in plumbing for adjustable sinks. This paragraph includes an appendix note similar to UFAS A4.34.6.5, recommending the provision of a rear drain in order to prevent garbage disposals and other plumbing from obstructing the required clear floor space.

Paragraph (6) requires that cooktops have accessible controls which do not require reaching across burners and a clear floor space allowing either a front or side approach. Cooktops with knee space underneath must be insulated or otherwise protected on the exposed contact surface to prevent burns, electrical shock, and abrasion. This section and its appendix note recommending counter top ranges with adjustable heights is similar to UFAS 4.34.6.6. The reference to ranges, as used in UFAS, was not included because this section only applies to cooktops. Ovens and ranges are included in the following section.

Paragraph (7) requires ovens to be of the self-cleaning type or to be located adjacent to an adjustable height counter with knee space below. For side opening ovens, the door latch side is required to be configured so that the even interior is accessible to the counter space. This paragraph requires a pull-out shelf under a side opening oven extending the full width of the oven and pulling out not less than 10 inches. Ovens are also required to have controls on front panels or on either side of the door. This paragraph and its appendix note explaining the rationale for the provisions are similar to UFAS 4.34.6.7. This section clarifies the difference between floor ovens and wall ovens.

Paragraph (8) provides for refrigerators and freezers to be either: 1) the side-by-side type or, 2) the over and under type, with fifty percent of the freezer within 54 inches and 100 percent of the refrigerator below 54 inches. If the above requirements are not met, the freezer shall be a self-defrosting type of mechanism. The appendix note provided with this section is similar to UFAS, except that the Board has clarified that having the ability to open the door 180 degrees provides greater maneuvering space at the opening by allowing knee and toe clearances at the hinge side by a parallel reach.

Paragraph (9) requires that dishwashers have accessible controls, clear floor space allowing either a front or side approach, and that all rack space be accessible from the front of the machine for loading and unloading dishes. This paragraph is the same as UFAS 4.34.6.9.

Paragraph (10) covers kitchen storage and is identical to UFAS 4.34.6.10. It requires that storage cabinets, drawers and shelf areas comply with ADAAG 4.25. At least one shelf in all cabinets and storage shelves mounted above work counters shall have a maximum height of 48 inches. Additionally, door pulls and handles are required to be mounted at the top of a base cabinet and at the bottom of a cabinet over a counter. As in UFAS, an appendix note recommends pantry style storage for greater accessibility.

The Board is considering a requirement that a portion of the kitchen storage cabinets be provided with pull-out shelving that will facilitate access to the rear of the unit.

Question 61: Should pull-out shelving the required in kitchen storage? If so, what are the costs associated with such a requirement?

13.3.5 Laundry Facilities

This section contains requirements for accessible laundry facilities which are essentially the same as UFAS 4.34.5.7. Paragraph (1) requires laundry facilities and equipment to be on an accessible route. Paragraph (2) requires a minimum of one washing machine and clothes dryer provided in each common use laundry room to be front loading. Under paragraph (3), laundry equipment controls must comply with ADAAG 4.27.

13.4 Requirements for Dwelling Units Accessible to Persons with Hearing Impairments

13.4.1 General

13.4.2 Equivalent Facilitation

This section addresses accommodations for persons with hearing impairments and is based on requirements for transient lodging in ADAAG 9.3 (Visual Alarms, Notification Devices and Telephones). Proposed ADAAG 13.4.1 requires auxiliary alarms complying with ADAAG 4.28.4 (Auxiliary Alarms); devices providing visual notification of incoming telephone calls and door knocks in living and sleeping rooms; volume controls complying with ADAAG 4.31.5 (Hearing Aid Compatible and Volume Control Telephones Required by 4.1) for permanently installed phones; and electrical outlets in proximity to telephone connections to facilitate use of portable text telephone devices. Proposed ADAAG 13.4.2 allows, as a means of equivalent facilitation, use of portable devices in lieu of permanent devices if appropriate electrical wiring for their use is provided. This section is consistent with ADAAG 93.3.

13.5 Requirements for Dwelling Units Accessible to Persons with Visual Impairments: Reserved

This section reserves requirements for persons with visual impairments. UFAS 4.34 which addresses dwelling units, is the main basis for the requirements in proposed ADAAG 13.3, does not include any specifications pertaining to access for persons with visual impairments. HUD's section 504 regulations require that two percent of the dwelling units in new construction be accessible to persons with visual impairments (24 CFR 8.22). The Board is considering including specific

requirements for persons with visual impairments as part of its final guidelines. Requirements that are under consideration are discussed below.

HUD has recommended certain accommodations for persons with visual impairments under section 504 with regard to its section 202 program, which provides rental subsidies for elderly persons and persons with disabilities. (See Memorandum from James E. Schoenberger, HUD General Deputy Assistant Secretary for Housing, to all Regional Administrators, July 3, 1989). These recommendations are: lighting fixtures which can accommodate 150 watt bulbs for tenants with residual vision; the mounting of cooktop controls on the front and side of ranges; tactile markings for controls; and colors for baseboards, doors, door frames, and windows that contrast with the color of walls and floors.

A number of publications have identified additional recommendations. One publication recommends use of a contrasting color to mark the leading edge of steps. (See "Making Life More Livable", American Foundation for the Blind at 59 (1983)). Another suggested decals placed on sliding glass doors and other large areas of glass at face and chest height (See Duncan, et. al., "Environmental Modifications for the Visually Impaired: A Handbook," Visual Impairment and Blindness at 444 (December 1977)). Another study recommended that doors to upper kitchen cupboards be of the sliding type to reduce the risk of injury posed by doors left ajar. (See Braf, "The Physical Environment and the Visually Impaired", Swedish Institute for the Handicapped at 24 (March 1974)).

Question 62: The Board seeks comment on what provisions, if any, are appropriate and should be included in this section. In particular, information is sought on what provisions, if any, are necessary in residential housing to accommodate persons with low vision as well as those who are blind. Where possible, responses should identify any supporting data or other sources, including building codes and State or local requirements and include cost information. Individuals and organizations representing persons who are blind or visually impaired are requested to provide recommendations based on their experience or expertise.

14. Public Rights-of-Way

The need to complement and connect accessible public and private sites and facilities with accessible pedestrian components is recognized in the House Education and Labor Committee Report on the ADA: ". . . the employment, transportation, and public accommodation sections of this Act [the ADA] would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets." (H. Rept. 101–485, pt. 2, at 84)

Standards directed toward the elimination of architectural barriers have been largely focused on buildings and facilities located on easily defined sites and on the accessible routes that ensure access within buildings and sites. Pedestrian circulation systems in the public right-of-way have not been explicitly addressed, although individual elements, such as walks and curb ramps, are covered by UFAS and ADAAG.

Travel between buildings, districts, and transportation modes requires the connection of individual pedestrian elements such as the public sidewalks, curb ramps, and street crossings of a jurisdiction into an accessible network. The transportation planning and development process offers the most useful model for the development of guidelines for connecting accessible pedestrian elements, components, and networks for a number of reasons. The purpose of a transportation system is to move an individual from one location to another and to provide the major origin/destination linkages that pedestrian routes connect to and from. Transportation systems are not site-specific and they are largely a public service. A pedestrian circulation system performs similar functions. For the most part, transportation facilities and services and pedestrian circulation networks operate within an environment limited by the constraints of topography and existing adjacent development. Both systems are part of the infrastructure of a municipality. They are complementary in that pedestrian routes complete the origin/destination linkages of public transportation.

Research sponsored by the Department of Transportation developed guidelines for the individual elements of the pedestrian circulation network and proposed the first nationwide guidelines for accessible pedestrian networks.[8] Municipalities that applied these planning and implementation strategies developed accessible networks within districts and along routes that served significant local destinations.[9] A subsequent study conducted by the Department of Transportation and the Federal Transit Administration (formerly the Urban Mass Transportation Administration) followed with an assessment of the physical and operational barriers associated with getting to and from the transportation stops and facilities.[10] This study demonstrates that the goals of accessibility are not adequately served if the design of individual elements such as curb ramps or pedestrian overpasses do not consider the planning context of the sidewalk and intersections they connect.

Accordingly, this section addresses the overall framework for a pedestrian circulation system, as well as the elements and components of such a system. Standards are proposed for sidewalks, curb ramps, crosswalks, and crossing controls with special provisions for drinking fountains, telephones, toilet facilities, and tables, seating and benches located along the pedestrian route. It also covers vehicular elements which are related to the pedestrian network such as on-street parking and roadside emergency communication systems. In addition to addressing the individual elements, this section provides for the connection of those elements within the sidewalk to ensure that pedestrians with disabilities are afforded the opportunity to travel on and between the streets.

14.1 General

This section generally applies ADAAG provisions for buildings and facilities to new construction in public rights-of-way, subject to the modifications contained in this section. It covers work: (1) that is undertaken by or on behalf of a State or local government entity, and (2) that involves elements for pedestrian access, circulation, and use whether by intention or as a consequence of other work. Such elements include sidewalks, curb ramps, crosswalks, crossing controls, drinking fountains, telephones, toilet facilities, fixed tables, seating, benches, and related on-street parking and roadside communication systems that are constructed or installed on or adjacent to a sidewalk or roadway within the limits or scope of a public improvement project. These elements are discussed in the sections that follow.

[8] "Provisions for Elderly and Handicapped Pedestrians" DOT/FHWA (1979); "Guidelines for Making Pedestrian Crossing Structures Accessible" DOT/FHWA (1984); "Planning, Design and Maintenance of Pedestrian Facilities" DOT/FHWA (1984), "Priority Accessible Networks" DOT/FHWA (1980).

[9] "Accessibility for Elderly and Handicapped Pedestrians—A Manual for Cities" DOT/FHWA (1987).

[10] "Planning, Implementing, and Maintaining Accessible Accessways to and from Bus Stops: Existing Problems and Possible Solutions for the Wheelchair Traveler" DOT/UMTA (1983).

An appendix note clarifies that this section is intended to apply special provisions to those pedestrian facilities that are constrained by terrain, vehicular roadways, and existing buildings or elements of the pedestrian network. Other areas or sites constructed or altered as part of a public improvement project, such as plazas or courts where the constraints listed above do not apply, are subject to the applicable provisions of ADAAG 4.1.1 through 4.35.

Where an improvement to the public right-of-way includes a plaza or court, those facilities are subject to the requirements of ADAAG 4.1.1 through 4.35. For example, an accessible route complying with ADAAG 4.3 must be provided connecting accessible elements within the site such as public transportation stops, accessible parking spaces, accessible entrances and other accessible elements provided on the site. Proposed ADAAG 14.2 requires that sidewalks or a continuous passage connect to the accessible route. Where the accessible route exceeds 1:20 (e.g., walks leading to the accessible entrance), and is constructed on a site not covered by proposed ADAAG 14, it must meet the requirements for handrails, level landings, and all other requirements in ADAAG 4.8. See A14.1.

Although the general section applies to new construction, most public improvement projects will occur within limits established by existing adjacent sidewalks, buildings, curbing, and roadway paving. Therefore, it may be difficult to distinguish between new construction and alterations in many public improvement projects. For example, the construction of a new sidewalk for an entire city block must connect on both ends to the existing sidewalks. The sidewalk is new construction even though it occurs within the boundaries of existing sidewalks. Therefore, this section contains provisions for site infeasibility which would normally apply only to alterations.

Vehicular and pedestrian planning within a new subdivision may seem less constrained, but in fact will be subject to limits of grading and filling, and may not always be able to meet all criteria for sidewalk slope. However, curb ramps and adjacent level landings should rarely, if ever, require exception.

Many public improvement projects may involve elements not covered by this section, such as new decorative lighting standards and lanterns, but which may involve altering the sidewalk. When the sidewalk is replaced following construction, it must comply with the provisions of this section for new construction.

Moreover, structural alterations undertaken in accordance with a jurisdiction's ADA transition plan must comply with the provisions of this section. See 28 CFR 35.150(b)(i).

14.1.1 Definitions

This section defines the key terms used in ADAAG 14.

Continuous passage is defined as a continuous unobstructed pedestrian circulation path within a sidewalk connecting pedestrian elements, systems, and facilities covered by ADAAG 14.

The definitions in ADAAG 3.5 for marked crossing and walk have been included here for reference.

Public improvement project is defined as a public works project consisting of the construction, alteration or installation of site improvements or amenities in the public right-of-way by or on behalf of a State or local government. This definition is derived from common terminology within the planning profession. Examples of public improvement projects include: (1) the construction or installation of site improvements and pedestrian amenities, landscaping, street furniture, and decorative paving, often as part of a downtown revitalization program; (2) the widening or realignment of a street which frequently involves new sidewalk and curb ramp construction; (3) the addition of transit shelters, pedestrian walkways, or bicycle paths for public circulation; (4) the upgrading of a storm or sanitary sewer, surface drainage system, or other utility; (5) the burial of overhead power or telephone lines; and (6) the installation of new area lighting. These projects are largely concerned with the infrastructure of a jurisdiction and are typically planned and budgeted for in a multi-year capital improvements program or as an annual maintenance and repair line item. Federal support may be provided through Community Development Block Grants or Federal Highway Act funding and may already require compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151, *et seq.*) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Projects may be undertaken within clearly defined boundaries or may consist of the installation of a typical item dispersed throughout an area or jurisdiction such as drinking fountains, toilets, benches, or curb ramps.

An appendix note recommends that public entities ensure that developers who provide sidewalks, curb ramps and other pedestrian improvements in the public right-of-way as part of the scope of a private project comply with the provisions of this section. Similarly, the suburban residential developer who constructs streets and sidewalks as part of a new subdivision in anticipation of a later annexation or donation of public ways to a local government should also comply with these guidelines. Most jurisdictions will already require conformance to their street and highway specifications as a condition of acceptance. See A14.1.1.

Sidewalk is defined as a walk in the public right-of-way bordering a vehicular way as part of an interconnected pedestrian circulation network. This definition is consistent with UFAS 3.5 (Definitions: Walk) and ADAAG 3.5 (Definitions: Walk), and incorporates the definition of "walk" but is limited to those walks that are in the public right-of-way along vehicular ways. Unlike the definition of "walk", the definition of "sidewalk" does not include general pedestrian areas such as plazas and courts which can be designed, altered, and constructed to meet the requirements of 4.1 through 4.35. Sidewalks covered by this section are constrained by the slope of vehicular ways, topography, and existing facilities and pedestrian circulation routes which limit the ability to meet ADAAG 4.1 through 4.35.

The definition is also consistent with the language in the Department of Justice regulations implementing title II of the ADA which address pedestrian walks and walkways in relation to requirements for curb ramps. See 24 CFR 35.150(d)(2) and 35.151(e). It is also consistent with the definition of sidewalk in the California Accessibility Standards. (See title 24, part 2, section 3325 (1989).)

Site infeasibility means, with respect to construction in the public right-of-way, that there are existing physical or site constraints prohibiting the incorporation of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility. This definition is derived from the definition of technically infeasible in ADAAG 4.1.6(1)(j) (Accessible Buildings: Alterations) and is applied to new construction because public improvement projects most frequently will occur within limits established by existing adjacent sidewalks, buildings, curbing, and roadway paving.

14.2 Sidewalks

14.2.1 Minimum Requirements

Proposed ADAAG 14.2 requires that sidewalks have a continuous passage along their length at least 36 inches in width which connects to building entrances and curb ramps, marked crossings, telephones, drinking fountains, toilet facilities, and other elements addressed in this section. The sidewalk or continuous passage must comply with requirements for width, slope, passing space, surface and separation.

The requirements of this section are derived from ADAAG 4.3 (Accessible Route). However, the provisions relating to handrails, level landings on ramps and at doors are not applicable to sidewalks except where the accessible route is coincident with the sidewalk. Therefore, the Board has applied only the requirements for width, passing space, surfaces and slope. In addition, this section requires that a 36 inch continuous passage connect to curb ramps or other sloped areas at street crossings and to the accessible routes on sites as specified in ADAAG 4.1.2(1). ADAAG 4.1.2(1) requires accessible sites to be connected to public transportation stops, sidewalks, and accessible building entrances. A provision requiring the separation of the sidewalk from the vehicular way has been added.

The Board is proposing a requirement for a 36 inch continuous passage along a sidewalk. The Board is not specifying an overall sidewalk width. Sidewalk design and construction, where regulated, is typically the province of a State transportation or highway department, most of which follow Department of Transportation and Federal Highway Administration recommendations. A 1988 study for the Federal Highway Administration proposed that central business district sidewalks be sized according to level of service and that other sidewalks be a minimum of 5 feet in width with a 2-foot planting strip or parkway except in low-density residential areas, where 4 feet was recommended.[11] The Board's proposal for a 36 inch continuous passage can be easily accommodated within these recommendations without special or additional construction. The Board's proposal is consistent with sidewalk requirements in several States, such as California, Massachusetts and North Carolina.

This provision is consistent with ADAAG 4.3.3 (Width), which requires a 36 inch clear width for an accessible route, and is derived from the space required for a comfortable gait by persons using walking aids. ADAAG 4.1.2(1) requires an accessible route to connect accessible elements within a site. This section permits use of the sidewalk, or a portion of it, to satisfy the requirements for an accessible route in ADAAG 4.1.2(1) only if the sidewalk meets all the requirements of 4.3 (Accessible Route).

An appendix note explains that where a required accessible route is coincident with that of the sidewalk or continuous passage along it, the sidewalk or passage must comply with ADAAG 4.3. See A14.2.1. The appendix note further explains that these provisions do not preclude sidewalk segments at different levels or sidewalks with stairs (which are sometimes advantageous in providing access to building entrances on or along steeply sloping sites) provided that a continuous passage serves each accessible entrance and is connected to a continuous accessible sidewalk. Where a sidewalk contains steps or where sidewalk levels diverge, a railing, planter or other barrier separating the levels is recommended. Stairs abutting a sidewalk should have uniform riser heights and uniform tread widths. See A14.2.1.

The appendix note also explains that the cross slope requirements pertain only to the portion of the sidewalk that is required to be 36 inches wide. Cross slopes on portions of sidewalks adjacent to the continuous passage required by proposed ADAAG 14.2 may exceed 2 percent, provided that the adjacent portions are smoothly blended. This may facilitate connecting the clear passage to building entrances, facilities or elements. See A14.2.1.

The appendix note also illustrates how narrow sidewalks immediately adjacent to the curb or roadway can be offset to avoid a non-conforming cross slope at driveway aprons by diverting the sidewalk around the apron. See Fig. A9. Sidewalks separated from the curb or roadway by a planted parkway can accommodate an apron within the width of the parkway. See A14.2.1.

Paragraph (1) requires the least possible running slope to be provided. The maximum slope shall be 1:12. It further requires that the cross slope of the minimum 36 inch passage not exceed 1:50. Handrails are not required. This provision is consistent with ADAAG 4.8.2 (Slope and Rise) and ADAAG 4.3.7 (Slope). Cross slopes are difficult for wheelchair users to manage on relatively flat routes of travel. When combined with steep running slopes, a 1:50 (2 percent) limit is important for safe travel. Although ADAAG 4.8 (Ramps) requires handrails where the slope of a ramp exceeds 1:20, this exception for handrails on sidewalks is consistent with ADAAG 4.8.5 (Handrails) which does not require handrails on curb ramps.

Due to a variety of existing conditions, it may not be possible for sidewalk slopes to meet all the requirements of ADAAG 4.3.7 (Slope). Therefore, the Board proposes an exception to paragraph (1) where site infeasibility precludes a maximum running slope of 1:12. Site infeasibility is derived from ADAAG 4.1.6(1)(j) and in this section applies to both new construction and alterations. This exception permits a jurisdiction to use site infeasibility where the public right-of-way may be physically constrained by existing construction or extremes of terrain. The Board recognizes that the gradients of pedestrian and vehicular circulation within the boundaries of a jurisdiction are directly tied to topography and the finish grades already established by existing adjacent building and public way construction. In such instances, this provision would require the least possible running slope to be provided.

Paragraph (2) requires sidewalks less than 60 inches in width to provide passing space at reasonable intervals. Passing space must provide a 60 inch by 60 inch minimum clear space or a T-shaped space and have a cross slope not exceeding 1:50. This provision is consistent with ADAAG 4.3.4 (Passing Space). Passing space will typically occur well within the more generous widths of standard urban sidewalks. Passing spaces along narrower sidewalks can generally be accommodated without special construction at building entrances or sidewalk intersections within the 200-foot limitation given a typical municipal block length.

Question 63: Is the 200 foot distance between passing spaces appropriate in all areas or should the distance be different for urban, suburban, and rural areas? If not, what should the distances be? Should the volume of pedestrian traffic be a determining factor? If so, how would future development and volume increase be accommodated? What would be the cost of the additional width required to permit a 60 by 60 inch passing space along a 36 inch wide sidewalk?

Question 64: California requires level landings at 400 foot intervals along some sidewalks where the slope is extreme. Should the Board include a similar provision in this section? If so, how can it be achieved without

[11] "Planning, Design and Maintenance of Pedestrian Facilities" DOT/FHWA (1989).

increasing the slope of the sidewalk? What increased cost would result?

Question 65: The natural terrain in many developed areas such as parts of San Francisco, Seattle, and Pittsburgh, will preclude, in many instances, construction of sidewalks with a running slope of less than 1:12. The Board is interested in local solutions and accommodations for persons with mobility impairments who need access to buildings and facilities on or along steeply sloping sidewalks. How can passing space, cross slope, and level landing provisions be satisfied in such areas? Commenters are encouraged to submit details and figures demonstrating approaches to pedestrian access under such conditions and to provide cost data where available.

Paragraph (3) requires sidewalk surfaces to be firm, stable, and slip resistant and that differences in level between ¼ and ½ inch be beveled. It further requires that gratings with elongated openings be placed so that the long dimension is perpendicular to the dominant direction of travel. This provision is consistent with ADAAG 4.5.1 (General), ADAAG 4.5.2 (Changes in Level), and ADAAG 4.5.4 (Gratings).

Paragraph (4) requires a separation between pedestrian walkways and vehicular ways. Separations may include but are not limited to curbs, grass or other plantings, or gravel. Components such as curbs, parkways, or other barriers which separate the pedestrian way from the roadway will not be continuous where driveways, or the continuous passage required by ADAAG 14.2.1, cross the separation. This provision is to ensure that edges of the sidewalk are detectable by persons who are blind or who have low vision. These types of separations are usually provided for drainage and safety to separate the pedestrian paths from roadways.

Paragraph (5) requires that where bus passenger loading areas or shelters are provided on or adjacent to sidewalks, they shall comply with ADAAG 10.2.

14.2.2 Historic and Special Use Sidewalks (Reserved)

The Board is considering treating historic sidewalks in a manner similar to ADAAG 4.1.7. A qualified historic sidewalk is one that is listed in, or eligible for listing in, the National Register of Historic Places or designated as historic under an appropriate State or local law. However, special scoping and technical provisions must be developed.

Many historic districts have areas where sidewalks are raised several steps above the roadway or are constructed of materials such as brick, cobblestones, Belgian blocks, or loose pea gravel on a consolidated base, that are difficult to traverse. Many historic neighborhoods have narrow sidewalks where passage is limited by large, mature trees, raised entrance porches or stairs, and other impediments to pedestrian circulation. Older brick and stone pavings have settled or heaved beyond acceptable limits.

Problems may arise if a portion of a historic sidewalk is removed and replaced as a consequence of a public improvement project. In such cases, historic preservation requirements would generally mandate that the new work match existing adjacent construction.

Special use sidewalks may include boardwalks constructed along beaches or areas which are subject to alternating tides or flooding. Such sidewalks have unique problems and characteristics similar to historic sidewalks.

Question 66: How can requirements for historic preservation be reconciled with the provisions of this section for new construction? The Board seeks comment on appropriate scoping and technical provisions for new construction and alterations to historic and special use sidewalks.

Should there be an alternate route provision similar to the exception provided in ADAAG 4.1.7(3)(b)? What means of equivalent facilitation might be appropriate? Is this an issue more properly addressed by program accessibility?

14.2.3 Street Identification and Pedestrian Signage

This provision requires pedestrian informational and directional signage and street identification signs to meet the minimum requirements for character proportion (ADAAG 4.30.2), character height (ADAAG 4.30.3), and finish and contrast (ADAAG 4.30.5).

Although some jurisdictions provide raised and brailled street names and bus stop and route information, the Board has not proposed a requirement for tactile or braille signage at this time because emerging technologies piloted in projects in this country and in Europe suggest that tactile signage may not be the most effective way of providing such information.

Pedestrian information and directional signs, such as markers along the route of an historic trail, the identification of historic elements and buildings on that route, and pedestrian advisory and warning signs can be useful in orientation only if users know where to find them. Signage directing pedestrians around temporary construction or hazards may also need to be provided. The Board is not aware of research which addresses issues of sign size, location, and standardization with respect to pedestrians with vision impairments. Providing some information in raised letters, such as Pittsburgh's "Boulevard of the Allies" street name sign, could be a protruding object if mounted at a 60 inch height due to the length of the street name (see 14.2.4 below). The Board may include a provision for some tactile signage in the final rule and is seeking information.

Question 67: If raised and brailled signage is provided, what pedestrian signs should be covered and how can issues such as sign size, location, and standardization be addressed? What are the costs involved? Is the absence of street name information a significant barrier to persons with visual impairments? Should applications vary according to location, such as urban, suburban, and rural areas?

New developments in audible and radio-transmitted wayfinding information suggest that communications technology may present options preferable to tactile signage such as the transmission of street names. A "smart intersection" pilot project in California is currently testing similar systems for providing information to vehicle drivers. Such technologies may be appropriate for pedestrian use.

Question 68: The Board seeks comment on how to provide orientation information contained in pedestrian signage accessible to persons with vision impairments. An audible system may provide access for persons who cannot read because of other disabilities, such as learning disabilities and mental retardation, but would be inaccessible to those who are both deaf and blind. Are there technologies that could accommodate all users? Should applications vary according to location, such as urban, suburban, and rural areas? Where possible, commenters should include cost information.

14.2.4 Protruding Objects

This section parallels ADAAG 4.4 (Protruding Objects) and applies it to public sidewalks and the areas adjacent to them. The provisions for a continuous passage within the sidewalk are intended to accommodate persons with mobility impairments. However, provisions for protruding objects apply to the entire width of a sidewalk because pedestrians with vision impairments will use all portions of the sidewalk.

Paragraph (1) permits objects projecting from walls to protrude a maximum of 4 inches into any portion

of the sidewalk when their leading edges are between 27 inches and 80 inches above the finished surface. Wall mounted objects that are located below 27 inches or above 80 inches may project any amount into the sidewalk provided they do not reduce the continuous passage required by proposed ADAAG 14.2. Free-standing objects mounted on posts or pylons are permitted to overhang their mountings a maximum of 12 inches within the same neight limits.

Paragraph (2) requires guardrails or other barriers where headroom along a sidewalk is less than 80 inches. The leading edge of such protective barriers must be at or below 27 inches above the finished surface of the sidewalk.

Pedestrians with vision impairments may be forced to adopt a restricted cane sweep technique on crowded sidewalks. Additionally, the speed with which people walk outdoors may cause them to encounter protruding objects before the cane sweep can detect them. Comments received during the initial rulemaking indicated that the 27-inch maximum requirement is insufficient for cane detection under many circumstances and may constitute a particular hazard along sidewalks. Several comments recommended various heights, but none provided any data as a basis for those suggestions. Commenters also suggested that the Board conduct additional research on the issue of protruding objects.

Question 69: Is the maximum 27-inch height for protruding objects sufficient to provide adequate warning to individuals who use canes and those who do not use canes? If adequate warning is not given, what changes should be made to these provisions and what research supports such changes? Should all protrusions between 0 and 80 inches be prohibited? Should post-mounted objects continue to be permitted to overhang their mountings up to 12 inches, instead of the 4-inch limitation applied to wall-mounted objects?

Paragraph (3) provides that fixed objects not covered by paragraph (1) and placed on or along a sidewalk shall not reduce the continuous 36-inch clear passage required by proposed ADAAG 14.2.1. Such objects may include permanently installed trash receptacles, fire hydrants, utility poles, or mail boxes.

14.2.5 Sidewalk Curb Ramps and Other Sloped Areas

This section addresses the technical requirements for curb ramps or other sloped areas. The technical provisions of ADAAG 4.7 (Curb Ramps) have been modified for applications in the public right-of-way because of constraints imposed by existing conditions.

The Department of Justice regulations implementing title II require that: (1) newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway; and (2) newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways. See 28 CFR 35.151(e).

The regulations further provide that program accessibility requirements apply to curb ramps at existing crossings. That is, each public entity is required to ensure the accessibility of the program of providing a pedestrian circulation system by undertaking a self-evaluation (28 CFR 35.105). If structural changes are needed, the public entity must develop its transition plan, identifying locations where curb ramps will be installed at existing street and highway crossings. (28 CFR 35.150(d)(2)). In making alterations to existing sidewalks or facilities, public entities must meet the new construction and alterations requirements of 28 CFR 35.151 (New Construction and Alterations). See 28 CFR 35.150(b)(1).

Paragraph (1) requires a curb ramp or other sloped area to be provided wherever a sidewalk crosses a curb or other barrier (e.g., parkway, berm, or gutter) to a street crossing and requires that it be connected to a continuous passage. This provision is consistent with ADAAG 4.7.1 (Location) and has been modified to incorporate the language in the Department of Justice title II regulations and the concept of continuous passage of this section.

"Other sloped areas" is a term used in Department of Justice title II regulations and is being defined here as an alternative to sidewalk curb ramps where severe slopes and constrained rights-of-way may preclude the installation of conventional curb ramps at pedestrian street crossings. This is further discussed below.

Paragraph (2) requires all curb ramps and other sloped areas to be constructed with the least possible slope. The maximum slope of a curb ramp is 1:12 when measured according to Fig. 59(a). This provision is consistent with ADAAG 4.7.2 (Slope) except that the reference to ADAAG 4.8.2 (Ramp: Slope and Rise) and ADAAG 4.1.6(3)(a) has been eliminated. Two new exceptions addressing severe site constraints have been incorporated in proposed ADAAG 14.2.5(2) and 14.2.5(4). Transitions and slopes of adjoining surfaces have been incorporated into proposed ADAAG 14.2.5(8).

Other sloped areas is applied in this section to one of two exceptions. The first exception under paragraph (2) (Slope) permits a parallel curb ramp. The second exception in paragraph (4) (Landings) allows an alternative method of measuring the slope.

The exception in paragraph (2) (Slope) permits a ramp to be installed parallel to the run of the sidewalk and curb when site unfeasibility precludes construction of a standard curb ramp. This exception will permit access to a street crossing from narrow rights-of-way or steeply sloping sidewalks. Three figures (58 (a) (b) and (c)) illustrate possible applications. The running slope and cross slope provisions are unchanged. This exception requires a level landing area the width of the ramp and minimum of 60 inches in length at the bottom of the ramp to accommodate a 90 degree turn when entering the perpendicular street crossing, in accordance with ADAAG 4.2.3 (Wheelchair Turning Space). The parallel ramp is taken from the "Illustrated Handbook of the Handicapped Section of the North Carolina State Building Code" (1982).

Paragraph (3) requires a 36 inch minimum width for sidewalk curb ramps and other sloped areas connecting to street crossings. This provision is consistent with the continuous passage width of proposed ADAAG 14.2 and ADAAG 4.7.3 (Width) for accessible routes.

Paragraph (4) proposes a requirement for level landings at curb ramps and other sloped areas at street crossings to provide safe stopping places along these sloping routes. Curb ramps and other sloped areas running in the primary direction of travel must have a level landing at the top that is the width of the ramp or other sloped area and a minimum of 48 inches in length.

Where severe slopes occur in the direction of pedestrian and vehicular travel, perpendicular cross-streets, alleys, and sidewalks typically afford level landing space. Building entrances may provide level landings. Relatively level platforms are normally provided at cross streets to keep water from entering buildings on the lower side of the street. However, level areas will not generally be available at mid-block crossings.

Exception 1 to paragraph (4) allows a landing to be a minimum of 36 inches in length where site infeasibility precludes a 48 inch landing. (See Fig. 60). Where site infeasibility also precludes exception 1, an alternative is provided in exception 2. Exception 2

proposes an alternative method of measuring the slope of a curb ramp or other sloped area (see Fig. 59(b)) where site infeasibility precludes a level landing at the top in accordance with proposed ADAAG 14.2.5(4) or exception 1, or a parallel ramp permitted by proposed ADAAG 14.2.5(2) cannot be provided. The alternative method of measuring slope applies to the side flares and cross slope as well as to the running slope. This is especially relevant to mid-block crossings.

Where there is no level area at an intersection, and the adjoining roadway slope equals or exceeds 1:12 (as permitted by the exception in proposed ADAAG 14.2(1)), it is impossible to provide a curb ramp with a maximum slope of 1:12, Where site infeasibility precludes a curb ramp with a narrow landing at the top or a parallel ramp, the Board is proposing an alternative method of measuring slope relative to the slope of the adjoining roadway. An alternative method is proposed because the traditional method of measuring the slope as shown in Fig. 59(a) cannot be used where the area around the curb ramp is not level. Cross slope and other provisions are unchanged. The Board intends the alternative measuring method to be used only in those limited instances where other provisions and exceptions cannot accommodate site constraints. The Board notes that this alternative method may result in steep slopes but believes it is necessary to provide access. Neither the ADA nor the regulations exempt steeply sloped areas from a requirement to provide curb ramps or other sloped areas at street crossings. Such slopes may not be negotiable by persons using manual wheelchairs but could be negotiated by persons using motorized wheelchairs, scooters and similar conveyances.

Question 70: Is the exemption proposed an acceptable solution to providing curb ramps in such steeply sloped areas? If not, is there a better way to ensure accessibility such as a different ramp configuration? Are there situations in which this exception should not be permitted?

Some cities have provided an alternate path as part of a "priority accessible network" to allow persons with disabilities to bypass a steep hill or other barrier.

Question 71: Does the designation of an alternate path provide equivalent facilitation? Are there other methods which have been found useful in providing access to facilities on steeply sloping sidewalks? Where possible, commenters should include cost information.

Paragraph (5) requires flared sides on curb ramps and other sloped areas where pedestrians must walk across the ramp, or where curb ramps are not protected by returned curbs. This provision applies ADAAG 4.7.5 (Sides of Curb Ramps) to curb ramps or other sloped areas in the public right-of-way. This provision is consistent with proposed ADAAG 14.2.5(4) which requires a landing at the top of the curb ramp and clarifies that the flared sides shall be 1:12 maximum where the landing length at the top of the curb ramp is at least 36 inches but less than 48 inches. See Figure 12(b).

Paragraph (6) requires curb ramps or other sloped area surfaces to be firm, stable and slip resistant. This provision is consistent with ADAAG 4.5.1 (General).

Paragraph (7) (Detectable Warnings) has been reserved. The Board plans to conduct additional research on detectable warnings and will be issuing a separate notice of proposed rulemaking to suspend certain ADAAG provisions for detectable warnings until January 26, 1995. The Board will consider public comments on that notice, as well as the results of the additional research, before proposing specific requirements for detectable warnings at curb ramps along a circulation route in the public right-of-way.

Paragraph (8) requires counter slopes of adjoining gutters and road surfaces connecting to the curb ramp or sloped area to be 1:20 maximum. This provision applies the requirements of ADAAG 4.7.2 (Slope) for counter slope to the roadway surfaces adjoining curb ramps or other sloped areas. Curb ramps and other sloped areas may not have lips where they meet the gutter or roadway. Transition and gratings provisions found in ADAAG 4.5 (Ground and Floor Surfaces) and 4.7 (Curb Ramps) are also incorporated to cover gratings which may be located in the roadway and otherwise would not be covered by proposed ADAAG 14.2.1(3).

Paragraph (9) requires curb ramps or other sloped areas at marked crossings to be wholly contained within the markings, excluding flared sides. This provision is consistent with ADAAG 4.7.9 (Location at Marked Crossings).

Paragraph (10) requires curb ramps or other sloped areas to be protected and located to prevent their obstruction by parked vehicles. This is consistent with ADAAG 4.7.8 (Obstructions).

Paragraph (11) requires built-up curb ramps or other raised sloped areas to be located so that they do not project into vehicular traffic lanes or into parking spaces or access aisles. This is consistent with ADAAG 4.7.6 (Built-up Curb Ramps) and ADAAG 4.6.3 (Parking Spaces).

Paragraph (12) contains provisions for diagonal curb ramps or other sloped areas and is identical to ADAAG 4.7.10 (Diagonal Curb Ramps).

Paragraph (13) contains provisions for islands and is identical to ADAAG 4.7.11 (Islands).

14.2.6 Crossing Controls

This section requires crossing controls to have a minimum size control button close to the curb ramp, mounted at a 48 inch height adjacent to a firm, stable, slip resistant surface 30 inches by 48 inches.

Pedestrian-actuated crossing controls are typically provided at intersections based upon traffic conditions and location characteristics that establish the minimum requirements necessary for such an installation. They are generally mounted on the traffic signal pole of the dominant traffic direction. When activated, they interrupt the standard signal cycle in order to provide an interval for pedestrian crossing. In some areas, signals have no regular crossing interval unless activated by pedestrians.

Paragraph (1) requires the button control to be raised or flush and ¾ inches in the smallest dimension. This requirement is consistent with ADAAG 4.10.3 (Hall Call Buttons) which requires hall call buttons in elevators to be a minimum of ¾ inches in the smallest dimension. It further requires that the force required to activate the controls may not exceed 5 lbf. This provision is consistent with ADAAG 4.1.3(13) which requires controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements to comply with ADAAG 4.27 (Controls and Operating Mechanisms). Some crossing control buttons are very small or require extreme pressure to depress, making them difficult to operate for persons with limited hand dexterity. Other devices have large buttons which may be easier to use. The Board's proposal requires a control button to be a minimum of ¾ inches.

Question 72: Should pedestrian crossing control buttons be required to be larger than ¾ inches? If so, what size should they be? Should the Board require the controls for pedestrian crossings to be two inch square raised buttons that permit activation from any angle? Are such controls available for pedestrian crossings? Are there cost differences between larger and smaller buttons? Are there any problems with

vandalism or maintenance associated with larger control buttons?

Paragraph (2) requires the crossing controls to be located as close as possible to a curb ramp and, to the maximum extent feasible, operable from a level area adjacent to the controls rather than from the sloped surface of the curb ramp itself. This requirement is to ensure that people with disabilities do not have to travel out of their way to activate the signal before crossing the street, and allows a maximum crossing time for those who may travel more slowly.

The technical provisions referenced in paragraphs (3) (Mounting Height) and (4) (Surface) depart slightly from ADAAG 4.2.5 (Forward Reach) and ADAAG 4.2.6 (Side Reach), which allow a maximum reach range of either 48 inches or 54 inches depending on the approach to the object. Paragraph (4) requires a firm, stable and slip resistant surface a minimum of 30 inches by 48 inches to be provided to allow for a forward or parallel approach to the controls. However, paragraph (3) limits the controls to a maximum height of 48 inches. The Manual on Uniform Traffic Control Devices recommends a mounting height between 42 and 48 inches. In proposing a maximum reach range of 48 inches, the Board took into consideration that in inclement weather and colder temperatures people will be wearing coats and jackets which may limit their reach ranges.

Question 73: Is a 48 inch mounting height appropriate for persons who use wheelchairs or would a lower height be more useful? Would a lower height be difficult for a person who uses crutches or a person with short stature?

Audible signal, vibro-tactile controls, and radio frequency transmissions to make "WALK/DON'T WALK" indicators accessible to pedestrians with vision impairments are being tested in some communities. Other detectable technologies and applications may be under development. Comments during the initial rulemaking suggested that the Board should require auditory or vibro-tactile crossing signals. The Board is considering a provision for audible or vibro-tactile crossing signals and is seeking additional information.

Question 74: The Board is interested in appropriate scoping and technical requirements for auditory or vibro-tactile crossing signals and the experience of jurisdictions that have used such signals. Should there be differences between requirements for noisy urban streets and quiet residential neighborhoods? Should applications vary according to location, such as in urban, suburban, and rural areas or by levels of pedestrian use? What technology is currently available or under development for such applications? What are the advantages, disadvantages, costs and user preferences of each system?

14.2.7 Marked Crossings

This section requires marked crossings to be delineated with contrasting markings or materials (e.g., paint, brick, tile). An appendix note recommends marked crossings at State and local government buildings and facilities, transportation facilities, places of public accommodation, at irregular intersections, and at mid block crossings.

Locating marked crossings in these areas is also recommended in the Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Administration (FHWA) and "A Policy on the Geometric Design of Highways and Streets" (1990) published by the American Association of State Highway and Transportation Officials (AASHTO).

Where provided, markings legally establish a crosswalk and therefore function as traffic control devices. They may be needed where high traffic volume makes crossings difficult. They clearly facilitate pedestrian crossing on vehicular ways. Since persons with certain disabilities may take longer to cross traffic lanes, marked crossings may be a critical portion of an accessible circulation path. They are of particular benefit to persons with low vision and may assist them in crossing an intersection. This is especially important where there are irregular crossings such as Y-shaped intersections or mid block crossings.

The greatest number of pedestrian accidents involve children, but the most severe pedestrian accidents involve elderly persons and persons with disabilities. Marked crossings are the single most recommended provision in research conducted on the needs of pedestrians who are elderly or who have disabilities. Elderly persons are involved in a large number of pedestrian accidents. As population, they do more walking than other age groups, both because of less access to vehicles and greater leisure time. Several researchers have found that poor eyesight is the cause of many accidents involving elderly pedestrians; poor hearing is a significant but lesser factor.[12]

The MUTCD observes that:

> Crosswalk markings at signalized intersections and across intersectional approaches on which traffic stops, serve primarily to guide pedestrians in the proper paths. Crosswalk markings across roadways on which traffic is not controlled by traffic signals or STOP signs must also serve to warn the motorist of a pedestrian crossing point * * *. Marked crosswalks should also be provided at other appropriate points of concentration, such as at loading islands, midblock pedestrian crossings, or where pedestrians could not otherwise recognize the proper place to cross. (MUTCD 3B–18).

Further, AASHTO's "A Policy on Geometric Design of Highways and Streets" (1990) indicates that the major pedestrian-vehicular conflict usually occurs at intersections and indicates that crosswalks are usually necessary at every intersecting street in business districts. (page 545).

MUTCD recommends that street crossings be marked:

> * * * at all intersections where there is substantial conflict between vehicle and pedestrian movements * * * [and] * * * at other appropriate points of pedestrian concentration, such as at loading islands, midblock pedestrian crossings, or where pedestrians would not otherwise recognize the proper place to cross. (MUTCD, 3B–23).

A similar recommendation covers established routes to school. (MUTCD, 7C–3). Local jurisdictions may have standard criteria for high pedestrian use areas, including requirements based on pedestrian and traffic flow, special districts, or central business districts.

In some jurisdictions, citizens may request that a marked crossing be installed to facilitate pedestrian crossing. Such a program may be a part of the overall program accessibility requirements of Department of Justice regulations implementing title II. (28 CFR 35.151(d)).

Question 75: Should the Board recommend locating marked crossings in areas other than those listed in the appendix, such as at traffic signals? Are there areas where marked crossings should be required? Commenters should provide cost and safety data where possible.

14.2.8 Pedestrian Overpasses and Underpasses

This section requires grade separated pedestrian overpasses and underpasses to be accessible by means of a ramp, elevator, or where permitted by ADAAG 4.1.3(5), a platform lift (wheelchair lift) and to connect to a sidewalk or other pedestrian circulation path.

Overpasses and underpasses built with funds from FHWA have generally been designed with ramps. However, many facilities have not been built with FHWA funds and some of those have

[12] Templer, "Accidents: Causes and Countermeasures" Pedestrian Research Laboratory, Georgia Institute of Technology (1975).

been constructed with a circular ramp. Circular ramps do not meet ADAAG 4.8 and are a particular problem for persons using wheelchairs because they have non-uniform cross slopes which does not permit all wheels to be on the ground at the same time. Also, the lack of level landings does not provide any rest area for persons with limited stamina.

Question 76: Are there constraints specific to overpasses and underpasses that could affect accessibility and which are not accommodated by the general provision for site infeasibility? Should there be a specific exception for certain conditions peculiar to overpasses and underpasses?

ADAAG 4.1.3(4) requires stairs to comply with ADAAG 4.9 only where no ramp or elevator is provided. Some ramped crossings may provide both stairs and ramps. Persons with mobility impairments may find lengthy ramps more difficult than stairs complying with ADAAG 4.9 (Stairs).

Question 77: Where stairs are provided in addition to a ramp at an overpass or underpass, should the guidelines require such stairs to comply with ADAAG 4.9 (Stairs)? What is the cost differential between stairs complying with ADAAG 4.9 and those which comply with local applicable building codes?

14.3 Drinking Fountains, Telephones, Toilet Facilities, Fixed Seating, Tables and Benches

14.3.1 Minimum Requirements

This section contains scoping provisions for drinking fountains, telephones, toilet facilities, fixed seating, tables and benches where provided on or adjacent to a sidewalk as part of a public improvement project. These elements must be reasonably dispersed within the project area, taking into consideration the proximity and number of existing accessible elements. An appendix note clarifies the dispersal requirement. See A14.3.

Paragraph (1) requires at least 50 percent, but not less than one, of drinking fountains to comply with ADAAG 4.15 (Drinking Fountains and Water Coolers). Where only one drinking fountain is provided it must be accessible to individuals who use wheelchairs in accordance with ADAAG 4.15 (Drinking Fountains and Water Coolers) and to those who have difficulty bending or stooping. This scoping provision is consistent with ADAAG 4.1.3(10) (Drinking Fountains).

Paragraph (2) requires at least 50 percent, but not less than one, of single unit public pay telephones to comply with ADAAG 4.31.2 through 4.31.8 (Telephones). Where banks of telephones are provided, this provision requires at least one accessible telephone per bank to be provided. In addition, 25 percent, but never less than one, of all other public telephones provided shall be equipped with a volume control. Signage complying with applicable provisions of ADAAG 4.30.7 (Symbols of Accessibility) is also required. This scoping provision is consistent with ADAAG 4.1.3(17)(a) and (b).

Paragraph (3) requires at least 50 percent, but not less than one, of fixed single user toilet facilities provided on a public right-of-way as part of a public improvement project to comply with ADAAG 4.22 (Toilet Rooms). This is a departure from ADAAG 4.1.2(6) which requires all public and common use toilet facilities to comply with ADAAG 4.22. Proposed ADAAG 14.3(3) is intended to cover individual fixed single-user toilet units connected to sanitary sewer lines and not portable units covered by 4.1.2(6). Signage complying with ADAAG 4.30.7 is required to be provided on the accessible units consistent with ADAAG 4.1.2(7). Signage on inaccessible units must indicate the location of the nearest accessible unit.

In some European cities, publicly-provided toilet facilities include permanent installations of prefabricated single-user units dispersed throughout a central business district on street corners. Both kiosk-sized inaccessible and larger accessible units are manufactured. Several U.S. cities are considering similar installations and at least one has initiated a pilot program to test the facilities in use, providing paired installations of inaccessible and accessible units. However, concerns have been raised that the larger accessible toilets could be used for shelter or for illicit activities. The Board is aware of one pilot project that was discontinued because the installation of a universal design accessible unit was reported to have resulted in a high rate of vandalism and abuse, particularly by drug dealers.

Question 78: Given such public safety concerns, is the proposed requirement to 50% accessible fixed single-user toilet units appropriate to meet the needs of persons with disabilities? Are there design solutions that would allow for a safe and universally accessible public toilet that could be used by everyone? Are there operational approaches, such as limiting the hours of use, that would allow all units to be accessible without raising concerns about vandalism and illicit activities?

Question 79: What are the manufacturing, installation, and maintenance cost differentials of providing and servicing a single standard type of unit versus two types of units?

Card, token, or key access to accessible units have been proposed as a way of avoiding vandalism and other abuses of the larger accessible units. In a pilot project that provided both accessible and non-accessible units, non-accessible units could be entered using coins or tokens, while accessible units required the use of an access card by persons with disabilities. This required special control and distribution procedures that may be viewed as discriminatory. Further, the Board is concerned that restricted access procedures may be subject to abuse and misuse, resulting in the same levels of vandalism and illicit activity as would uncontrolled or coin-operated access to accessible units. If this is so, then limiting access may prove ineffective as a preventive measure.

Question 80: How effective have limited access procedures been in similar situations? If restricting access by requiring card, token, or key operation is necessary, in what ways could equivalent facilitation be provided? Should the state or local government having jurisdiction be required to provide cards at all hours the units are operable and within a specified distance from the units?

Paragraph (4) requires at least five percent, but not less than one, of fixed seating and tables to comply with ADAAG 4.32 (Fixed or Built-in Seating and Tables) and five percent, but not less than one, of fixed benches to comply with 4.35.4. This provision is consistent with ADAAG 4.1.3(18).

Question 81: Should fixed benches, or some percentage thereof, be required to have armrests? Should some benches be required to have backrests? What technical situations would be appropriate for back height, seat slope, and arm rests? Are the specifications in ADAAG 4.35.4 adequate? Where possible, commenters should provide cost data.

14.4 Vehicular Ways and Facilities

14.4.1 On-Street Parking

Proposed ADAAG 14.4.1 contains provisions for new on-street parking resulting from construction that is part of a public improvement project in areas zoned for business uses, including mixed-use zoning that contains business occupancies. This provision covers parking spaces that are metered, time-limited, or similarly regulated by a

jurisdiction and that are designated by signage. It does not apply to areas in which on-street parking is simply permitted, such as residential neighborhoods and developments.

On-street parking is often more convenient to facilities than off-street parking lots. In small towns and business districts, such parking may be the only public parking that a State or local government provides. Therefore, the Board is proposing a provision that requires a percentage of on-street parking to be accessible where on-street parking is provided.

Proposed ADAAG 14.4.1 requires on-street parking to be provided according to the table in ADAAG 4.1.2(5)(a). The provision requires a minimum 60 inch access aisle to be provided clear of the driving lane. This provision references figures from Texas[13] and the Department of Transportation.[14] The access codes of New Jersey and North Carolina contain similar technical specifications, as does the Board-sponsored UFAS Retrofit Manual (1991). Accessible parallel parking spaces are designed and constructed much like passenger loading zones referenced in ADAAG 4.6.6. The Board is not requiring designated van accessible spaces because side lift vans can exit onto the sidewalk from a standard parking space, provided that access to the sidewalk is not obstructed by fixed or movable objects. Vans with rear lifts should be able to use the spaces shown in Figures 61 (a) and (b), provided that the space is at least 26 feet long.

Question 82: What is an appropriate basis for determining the numbers of accessible parking spaces required within the inventory of designated on-street spaces provided by a public entity? The Board is seeking information on the requirements in other States and intends to provide a scoping provision in the final rule. Should the requirements be different for a central business district, a mixed-use area, or near medical and other special facilities? Should the requirement apply only where the sidewalk is a minimum width or where there is a parkway or a space not intended for pedestrian circulation, such as segments normally occupied by trees, benches or other amenities where the accessible aisle could be most easily accommodated? Should the requirement be different for alterations, such as where a street is widened or pedestrian amenities, such as planters, trees, or benches, as well as parking, are provided as part of a downtown improvement project? What technical and scoping requirements have been developed for accessible or van accessible parallel, angled, or perpendicular on-street parking spaces based upon the total number of spaces provided by a jurisdiction in parking districts or at special uses and facilities? What cost data are available on the provision of accessible on-street parking spaces?

Paragraph (1) requires a curb ramp or other sloped area to be provided to connect the access aisle to the sidewalk and references proposed ADAAG 14.2.5. This provision is consistent with ADAAG 4.6.3 (Parking Spaces).

Paragraph (2) requires accessible parking spaces to be dispersed throughout the project area. An appendix note clarifies that accessible on-street parking spaces provided immediately adjacent to intersections may be served by sidewalk curb ramps, provided that the required access aisle connects to the pedestrian crossing. It also recommends that accessible on-street parking spaces be located in relatively level areas. It should be noted that program accessibility requirements may not be satisfied if a majority of accessible parking spaces are located along steeply-sloping roadways.

Question 83: Where a city expands its incorporated limits or provides new on-street parking spaces in outlying areas, the new accessible spaces may be the furthest from business districts. Should there be a provision permitting or requiring the State or local government to provide additional spaces in an existing municipal parking lot if it provides greater accessibility to business districts than does the remote on-street parking? Commenters are encouraged to provide cost data when possible.

Paragraph (3) requires accessible parking spaces to be designated as reserved by a sign showing the symbol of accessibility. It further requires that the sign be located to be visible from a driver's seat. This provision is consistent with ADAAG 4.6.4 (Parking Spaces).

Paragraph (4) requires parking meter controls, including the coin slot, to be located a maximum 48 inches above the sidewalk and that the controls be easy to operate. A firm, stable slip resistance surface must be provided at the controls and connect to a sidewalk. This provision is consistent with ADAAG 4.27.4 (Operation) and ADAAG 4.2.5 (Forward Reach). As discussed under proposed ADAAG 14.2.6 (Crossing Controls), the proposed reach range of 48 inches anticipates that people will be wearing coats and jackets in inclement and cold weather which may limit their reach ranges.

Question 84: Is a 48 inch control height appropriate for persons who use wheelchairs or would a lower height be more useful? Would a lower height be difficult for a person who uses crutches? Is there an additional cost associated with a lower control height?

Question 85: Currently, 24 States permit no-charge parking at meters for vehicles displaying an authorized parking plate or placard for a person with a disability. In these jurisdictions, parking meters may not need to be accessible unless reciprocity with other jurisdictions is not guaranteed. The Department of Transportation encourages States to extend reciprocal recognition. See 23 CFR 1235.8. Should parking meters be required to be accessible in those jurisdictions that both: (a) exempt vehicles displaying the appropriate plate or placard from parking fees and (b) recognize plates or placards from other jurisdictions?

14.4.2 Roadside Emergency Communications Systems

Roadside call boxes are essential for emergency situations, such as engine failure or accidents, in which it is especially important for all people to get immediate assistance. In particular, some persons with disabilities have extreme sensitivity to cold and cannot wait for assistance in an unheated automobile. The Board is aware of concerns raised about the safety of persons with disabilities getting out of their cars or vans on the highway where uneven terrain and high speed traffic may be a problem, but considers the need for accessible roadside emergency communication to be equally important. People in emergency situations need to have the choice to remain in the vehicle or call for help.

Paragraph (1) requires controls and operating mechanisms to be operable by one hand and not require tight grasping, twisting or pinching of the wrist. It further requires that the force to operate the controls not exceed 5 lbf (22.2N). This provision is consistent with ADAAG 4.1.3(13) which requires controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements to comply with ADAAG 4.27 (Controls and Operating Mechanisms). This paragraph further requires the maximum mounting height of such controls to be 54 inches. This provision is consistent with ADAAG 4.2.6 (Side Reach).

[13] Texas Admin. Code title 16 section 68.112(i)1.5.

[14] "Provisions for Elderly and Handicapped Pedestrians" DOT/FHWA (1980).

In August 1985, the Delaware Architectural Accessibility Board conducted a study in response to complaints by the disability community that the call boxes were mounted too high and blocked by curbs, guard rails and poles. Subject testing and subsequent pole crash testing resulted in a recommendation that controls be mounted at a maximum height of 54 inches, adjacent to a concrete pad. The call boxes tested had a pull requirement of 12 lbs. On this issue, the study noted that it was not possible, "* * * to evaluate the mechanical arrangement to determine whether gearing changes or other modifications could reduce the necessary pull force * * *" and that further study was required. See "Report on the Accessibility and Usability of the Sig Com Motorist Aid Communication System" Delaware Architectural Accessibility Board at 6 (1985).

Additionally, the specific device tested required pulling a handle through a specified range to activate the transmission of a signal. The study suggested that lowering the box below 54 inches could interfere with this operation. Also, the study raised issues regarding snow removal and build-up covering the call boxes.

Question 86: The Board seeks information on whether the 5 lbf requirement can be met. Are there existing devices or systems that currently comply?

Question 87: The Board is considering a requirement for a mounting height of 48 inches and is seeking information on whether it can be achieved.

Paragraph (2) requires the system to provide both visual and auditory acknowledgement of call receipt and not require voice communication. This provision is consistent with ADAAG 4.10.14 (Emergency Communications). The system studied by Delaware did not require voice communication and provided an auditory call confirmation (beep) feature. The study recommended that future models incorporate a visual indicator as well.

Paragraph (3) requires that a firm, stable, slip resistant surface that is a minimum of 30 inches by 48 inches be provided immediately adjacent to the call box. Typically this will consist of a concrete pad with a level surface. ADAAG 4.2.6 (Side Reach) specifies a maximum depth of 10 inches for a side reach height at 54 inches. The Delaware study noted that such pads were frequently placed a significant distance from the pole on which the call box was mounted and recommended that the pads be placed a maximum distance of 21 inches from the mounting, which is consistent with the 48 inch maximum height requirement in ADAAG 4.25.3 (Height).

This provision requires the level area to be connected to the roadway shoulder, sidewalk or pedestrian path, but does not require that paved shoulders or sidewalks be provided. However, it does require that a person using a wheelchair be able to reach the level area from the roadway shoulder. This would prohibit the level area from being separated from the roadway by a ditch, gutter, curb, or other barrier.

Question 88: Some jurisdictions have considered providing persons with disabilities cellular phones in lieu of providing accessible call boxes. How can such a distribution be accomplished especially for non-residents? How can communication be provided in areas (country or rural areas) where there is no cellular phone capability and limited; if any, call boxes provided? Should such a system be permitted as an alternative to making roadside emergency communication systems accessible? What are the costs associated with such systems?

14.5 Alterations

This section requires elements that are altered in the scope of a public improvement project, to be altered to comply with the applicable provisions of ADAAG 4.1.6 Accessible Buildings: Alterations and proposed ADAAG 14.

An alteration, as defined in ADAAG 3.5, means any change to a building or facility that affects or could affect the usability of the building or facility or any part thereof.

Alteration sections of the guidelines typically follow new construction provisions and include provisions that are somewhat less stringent. An alteration section would also typically include exceptions for technical infeasibility to allow for existing constraints that might preclude strict compliance with the provisions for new construction. However, construction in the public right-of-way has characteristics that are not usually found in the construction of buildings and facilities on well-defined sites. As explained in the preamble to proposed ADAAG 14.1, new construction in the public right-of-way has many of the characteristics of an alteration because it must fit within the confines of roadways and buildings and must connect to an existing pedestrian circulation network. For this reason, an allowance for site infeasibility has been included in the provisions for new construction in this section. Therefore, the allowances for site constraints are not confined only to alterations and the alteration section here simply references the guidelines for new construction.

When a pedestrian route is modified, each element that is a part of the modification must be brought into compliance with the applicable sections of these requirements. Additionally, the Board encourages jurisdictions to consider each project as an opportunity to further the accessibility of its pedestrian network and should not unnecessarily restrict the scope of work so as to avoid the requirements for new accessible elements or construction. For example, utility work that removes part of a sidewalk adjacent to an intersection might not involve breaking through the curb face. Therefore, no curb ramp would be installed. In such a case, however, there is an opportunity to install a curb ramp with very little additional cost. The replacement of a length of sidewalk, removed to permit the installation of new curbs and gutters, presents an opportunity to bring at least a continuous passage into compliance with new construction standards.

Furthermore, ADAAG 4.1.6(1)(a) requires that alterations not decrease accessibility. For example, the installation of decorative lighting, lanterns, or other elements such as street furniture, landscaping, hydrants, transformers, signals, or kiosks located within a sidewalk or right-of-way shall not restrict a required width of passage.

Replacing a section of sidewalk damaged by the encroachment of tree roots will fall into the category of repair and maintenance and the replaced section must meet adjacent existing surfaces at its edges. However, the replacement of a block-long sidewalk segment removed for the installation of below-grade piping should be treated as new construction if it affords the opportunity to remedy the slope, cross slope, surface or other deficiency in accessibility.

The Board recommends that jurisdictions review their standard contract language and specifications to ensure that such considerations supersede the requirement to "restore to existing conditions" where the work is performed by outside contractors.

14.6 Temporary Work

This section applies ADAAG 4.1.1(4) (Temporary Structures) to temporary work in the public right-of-way, whether it be new construction, alterations, or maintenance and repair. It requires (1) barriers to protect pedestrians from hazards along the circulation path and (2) appropriate identification of an alternate accessible

circulation path around any obstructions.

Temporary work may be a particular hazard to pedestrians with vision impairments who may have memorized the circulation routes and are not provided with accessible directions to the proper path. Jurisdictions and their contractors should ensure that barriers meet the specific needs of pedestrians as detailed in proposed ADAAG 14.2.4 Protruding Objects.

Further, the removal, even for only a short time, of a curb ramp or other accessible element may preclude access to buildings, facilities, or areas by a person using a wheelchair or require a lengthy, circuitous route to bypass such barriers in order to reach regular destinations. The alternate route should be equally convenient and accessible for all sidewalk users and should be clearly marked to avoid extra travel distance.

Regulatory Process Matters

Preliminary Regulatory Impact Analysis

These guidelines are issued to provide guidance to the Department of Justice in establishing accessibility standards for new construction and alterations of State and local government facilities covered by title II of the ADA. The standards established by the Department of Justice must be consistent with these guidelines. These guidelines meet the criteria for a major rule under Executive Order 12291 and this Notice of Proposed Rulemaking has been reviewed by the Office of Management and Budget pursuant to that order.

The Board has prepared a Preliminary Regulatory Impact Analysis (PRIA) which has been placed in the docket and is available for public inspection at the Board's office. The PRIA includes a cost impact analysis for certain accessibility elements and a discussion of the regulatory alternatives considered. The Board encourages comment on the PRIA as well as the submission of any data that would assist the Board in estimating the costs and benefits of the proposed rule.

Accessibility does not generally add features to a building or a facility but rather simply requires that features commonly provided have certain characteristics. Some of the characteristics may add marginally to the cost of an element; however, the costs for installation are not usually increased. In addition, accessibility generally adds little or no space to buildings and facilities. Several studies discussed in the Regulatory Impact Analysis prepared for the initial rulemaking have shown that designing buildings and facilities to be accessible, from the conceptual phase onward, adds less than one percent to the total construction costs.

For purposes of the PRIA, the Board analyzed those provisions that pertain only to buildings and facilities constructed or operated by State and local governments which are covered by title II of ADA. Included in the analysis were: Jury boxes and witness stands, adaptability to fixed judges' benches, clerks' stations, speakers' rostrums and raised daises, drinking fountains, security systems, two-way communication systems, electrical outlets, wiring and conduit for communication systems, grab bars in bathrooms, visual alarms and notification devices, platform lifts and elevators, passing space on sidewalks, crossing controls, and on-street parking. The PRIA also discusses the indirect costs of the accessibility elements such as maintenance, operation and opportunity costs.

Preliminary Regulatory Flexibility Act Analysis

Under the Regulatory Flexibility Act, the publication of a proposed rule requires the preparation of a preliminary regulatory flexibility analysis if such rule could have a significant economic impact on a substantial number of small entities. These guidelines will have such an impact. Section 605(A) of the Regulatory Flexibility Act permits an agency to satisfy the flexibility analysis requirement by addressing the impacts of the rule on small entities in the agency's PRIA. The Board has chosen to exercise that option and will thus address the impact of the guidelines on small entities as part of the PRIA.

The Board would also like to point out that the economic impacts imposed upon the small entities subject to the guidelines are the necessary result of the ADA statute itself. Every effort has been made by the Board to lessen the economic impact of this rule on small entities, but little discretion was reserved to the Board in this area.

Federalism Statement

These guidelines will have some Federalism impacts. The Board would point out that the impacts imposed upon State and local government entities are the necessary result of the ADA statute itself. Every effort has been made by the Board to lessen the impact of these guidelines on State and local government entities, but little discretion was reserved to the Board in this area. The PRIA discusses the impacts of these guidelines on public entities. This discussion serves the purposes of a Federalism Statement under Executive Order 12612 for purposes of this rule.

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities.

Authorized by vote of the Board on July 15, 1992.

Kathleen Parker,

Chairman, Architectural and Transportation Barriers Compliance Board.

For the reasons set forth in the preamble, it is proposed to amend part 1191 of title 36 of the Code of Federal Regulations as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: Americans with Disabilities Act of 1990, Pub. L. 101–336, 104 Stat. 370 (42 U.S.C. 12204).

Appendix to Part 1191—Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

2. The Appendix to part 1191 is amended as follows:

a. In section 1. Purpose, the second paragraph is amended by removing the words "sections 5 through 10" and adding in their place "the special application sections" and by adding "-1980" after "ANSI A117.1" in the last sentence.

b. In section 1. Purpose, the third paragraph is amended by adding "-1980" after "ANSI A117.1" in the first sentence.

c. In section 3.5 Definitions, the definition for "Alteration" is amended by adding the words "place of" immediately following "for the use of a" in the first sentence; by adding a comma after the word "accommodation" in the first sentence; by removing the word "or" which follows the word "accommodation" in the first sentence; and by adding "or a State or local government entity" in the first sentence to follow "commercial facility,".

d. Section 3.5 Definitions, by adding a definition for "Continuous Passage" in alphabetical order.

e. Section 3.5 Definitions, by revising a definition for "Dwelling Unit".

f. Section 3.5 Definitions, by adding a definition for "Public Improvement Project" in alphabetical order.

g. Section 3.5 Definitions, by adding a definition for "Sidewalk" in alphabetical order.

h. Section 3.5 Definitions, by adding a definition for "Site Infeasibility" in alphabetical order.

i. In section 3.5 Definitions, the definition for "Transient Lodging" is amended by adding the words "and residential facilities" immediately following the words "medical care facilities" in the first sentence; by removing the words "one or more dwelling units or" in the first sentence; and by adding the words "and other facilities used on a transient basis" in the last sentence immediately following the words "and dormitories".

j. In section 4.1.1 Application, paragraph (1) General is amended by removing the words "required to be accessible by 4.1.2 and 4.1.3," in the first sentence; by removing the words "required to be accessible by 4.1.6" in the first sentence; and by removing the words "these guidelines," in the first sentence.

k. In section 4.1.1 Application, paragraph (2) Application Based on Building Use is amended by removing the words "5 through 10" in the first sentence; by removing the words "for restaurants and cafeterias, medical care facilities, business and mercantile, libraries, accessible transient lodging, and transportation facilities" and adding in their place the words "based on building use".

l. In section 4.1.3 Accessible Buildings: New Construction, Exception 1 in paragraph (5) is amended by adding the words "places of public accommodation and commercial" in the first sentence immediately following the words "Elevators are not required in".

m. Section 4.1.3(17) Public Telephones, paragraph (c), by adding new paragraphs (c)(iv) and (c)(v).

n. Section 4.1.3(17) Public Telephones, by adding an exception to paragraph (d).

o. In section 4.1.6 Accessible Buildings: Alterations, paragraph (k)(i) is amended by adding the words "place of public accommodation or commercial" in the first sentence immediately following the words "an elevator in an altered".

p. In section 4.1.7 Accessible Buildings: Historic Preservation, paragraph (1)(a) is amended by removing the words "5 through 10" in the first sentence and by revising the exception in paragraph (1)(a).

q. Section 7.2 Sales and Service Counters, Teller Windows, Information Counters, by redesignating paragraph (3) as paragraph (4) and by adding new paragraph (3).

r. Section 10.4.1 New Construction, by revising paragraph (8) Security Systems.

s. By adding new sections 11 through 14.

t. In the appendix to the appendix, by redesignating note A7.2(3) as note A7.2(4) and by adding new note A7.2(3)(iii).

u. In the appendix to the appendix, by adding note A10.4.1(8).

v. In the appendix to the appendix, by adding notes A11.0 through A14.4.2(3).

The additions and revisions of the appendix to part 1191 are published and other parts of the appendix are republished to read as follows:

Appendix to Part 1191—Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

* * * * *

BILLING CODE 8150-01-M

1. PURPOSE.

This document sets guidelines for accessibility to buildings and facilities by individuals with disabilities under the Americans with Disabilities Act (ADA) of 1990. These guidelines are to be applied during the design, construction, and alteration of buildings and facilities covered by titles II and III of the ADA to the extent required by regulations issued by Federal agencies, including the Department of Justice and the Department of Transportation, under the ADA.

The technical specifications 4.2 through 4.35, of these guidelines are the same as those of the American National Standard Institute's document A117.1-1980, except as noted in this text by italics. However, sections 4.1.1 through 4.1.7 and the special application sections are different from ANSI A117.1-1980 in their entirety and are printed in standard type.

The illustrations and text of ANSI A117.1-1980 are reproduced with permission from the American National Standards Institute. Copies of the standard may be purchased from the American National Standards Institute at 1430 Broadway, New York, New York 10018.

* * * * *

3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS.

* * * * *

3.5 Definitions.

* * * * *

Alteration. *An alteration is a change to a building or facility made by, on behalf of, or for the use of a place of public accommodation, commercial facility, or a State or local government entity that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.*

* * * * *

Continuous Passage. See 14.1.1.

* * * * *

Dwelling Unit. See 13.1.

* * * * *

Public Improvement Project. See 14.1.1.

* * * * *

Sidewalk. See 14.1.1.

* * * * *

Site Infeasibility. See 14.1.1.

* * * * *

Transient Lodging. *A building, facility, or portion thereof, excluding inpatient medical care facilities and residential facilities, that contains sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories and other facilities used on a transient basis.*

* * * * *

4. ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS.

4.1 Minimum Requirements

4.1.1* Application.

(1) General. All areas of newly designed or newly constructed buildings and facilities and altered portions of existing buildings and facilities shall comply with 4.1 through 4.35, unless otherwise provided in this section or as modified in a special application section.

(2) Application Based on Building Use. Special application sections provide additional requirements based on building use. When a building or facility contains more than one use covered by a special application section, each portion shall comply with the requirements for that use.

* * * * *

4.1.3 Accessible Buildings: New Construction.

Accessible buildings and facilities shall meet the following minimum requirements:

* * * * *

(5)* One passenger elevator complying with 4.10 shall serve each level, including mezza-

nines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each full passenger elevator shall comply with 4.10.

EXCEPTION 1: Elevators are not required in places of public accommodation and commercial facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General. The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor. In new construction if a building or facility is eligible for this exemption but a full passenger elevator is nonetheless planned, that elevator shall meet the requirements of 4.10 and shall serve each level in the building. A full passenger elevator that provides service from a garage to only one level of a building or facility is not required to serve other levels.

* * * * *

(17) Public Telephones:

* * * * *

(c) The following shall be provided in accordance with 4.31.9:

* * * * *

(iv) If an interior public pay telephone is located in a judicial, legislative, or regulatory facility subject to section 11, then at least one interior public text telephone shall be provided.

(v) If an interior public pay telephone is located in a public area in a detention or correctional facility subject to section 12, then at least one interior public text telephone shall be provided in at least one public area. In addition, if an interior public pay telephone is provided in the secured area of such a facility, then at least one public text telephone shall also be provided in at least one secured area. Secured areas are those areas used only by detainees or inmates and security personnel.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

EXCEPTION: This requirement does not apply to the secured areas of detention or correctional facilities where outlets are prohibited for purposes of security or safety.

* * * * *

4.1.6 Accessible Buildings: Alterations.

(1) General***

* * * * *

(k) EXCEPTION:

(i) These guidelines do not require the installation of an elevator in an altered place of public accommodation or commercial facility that is less than three stories or has less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, the professional office of a health care provider, or another type of facility as determined by the Attorney General.

* * * * *

4.1.7 Accessible Buildings: Historic Preservation.

(1) Applicability:

(a) General Rule. Alterations to a qualified historic building or facility shall comply with 4.1.6 Accessible Buildings: Alterations, the applicable technical specifications of 4.2 through 4.35 and the applicable special application sections unless it is determined in accordance with the procedures in 4.1.7(2) that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility in which case the alternative requirement in 4.1.7(3) may be used for the feature.

EXCEPTION: If it is determined in accordance with the procedures in 4.1.7(2) that it is not feasible to provide physical access to a qualified historic building or facility in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided as required by 28 CFR 35.151(d)(2) for State and local government programs and 28 CFR 36.405(b) for places of public accommodation and commercial facilities.

* * * * *

7.2 Sales and Service Counters, Teller Windows, Information Counters.

* * * * *

(3) In buildings or facilities owned or operated by a State or local government:

(i) Where counters have cash registers and are provided for the sales or distribution of goods or services to the public, at least one of each type shall comply with 7.2(1).

(ii) At teller windows, service counters, or other counters that do not have a cash register but at which goods or services are sold or distributed, at least one of each type shall comply with 7.2(2).

(iii)* In addition, at counters or teller windows with solid partitions or safety glass separating personnel from the public, at least one of each type shall provide a method to facilitate voice communication. Such methods may include, but are not limited to, grilles, talk-thru baffles, intercoms, or telephone handset devices. The method of communication shall be accessible to both individuals who use wheelchairs and individuals who have difficulty bending or stooping. If provided, at least one telephone communication device shall be equipped with volume control complying with 4.31.5. Hand-operable communication devices, if provided, shall comply with 4.27.

(4)* Assistive Listening Devices. (Reserved)

* * * * *

10.4 Airports.

10.4.1 New Construction.

* * * * *

(8)* Security Systems. In airports owned or operated by State or local government entities, at least one accessible route complying with 4.3 shall be provided through fixed security barriers at each single barrier or group of security barriers. A group is two or more security barriers immediately adjacent to each other at a single location. Where security barriers incorporate equipment such as metal detectors, fluoroscopes, or other similar devices which cannot be made accessible, an accessible route shall be provided adjacent to such security screening devices to facilitate an equivalent path of travel. The path of travel shall permit persons with disabilities passing through security barriers to maintain visual contact with their personal items to the same extent provided other members of the general public.

EXCEPTION: Doors, doorways, and gates designed to be operated only by security personnel shall be exempt from 4.13.6, 4.13.9, 4.13.11, and 4.13.12.

* * * * *

11. JUDICIAL, LEGISLATIVE, AND REGULATORY FACILITIES.

11.1* In addition to the requirements in 11, judicial, legislative and regulatory facilities shall comply with the applicable provisions of 4.1 through 4.35. All public and common use areas are required to be designed and constructed to comply with section 4.

11.2 Courtrooms, Hearing Rooms, and Chambers.

11.2.1 Where the following elements are provided, each shall be on an accessible route complying with 4.3 which coincides with the circulation path provided for all persons using the element. The elements shall comply with the following provisions.

(1) Doors or Gates. Doors or gates designed to allow passage into the well of the courtroom, the witness stand, the jury box, the speaker's rostrum, or other areas shall comply with 4.13.

(2)* Jury Boxes and Witness Stands. Each jury box and witness stand shall have at least one accessible wheelchair space complying 4.33.2. Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users. Accessible spaces shall be provided in the defined area of the jury box or witness stand. Fixed counters in the witness stand shall comply with 4.32. Clear floor space for a front approach shall be provided. The maximum height of controls and operating mechanisms shall be 48 in (1220 mm) and comply with 4.27.3 and 4.27.4.

EXCEPTION: In alterations to existing facilities where it is technically infeasible to provide a fixed means of vertical access to the witness stand or jury box, clear floor space shall be provided to accommodate a portable ramp as long as jurors or witnesses with disabilities are inside the defined area of the jury box or witness stand.

(3) Spectator, Press, and Other Areas with Fixed Seats. Where spectator, press or other areas with fixed seats are provided, each area shall comply with 4.1.3(19)(a). In addition, where the spectator seating capacity exceeds 50 and is located on one level that is not tiered or sloped, wheelchair spaces shall be provided in more than one seating row.

(4)* Fixed Judges' Benches, Clerks' Stations, Speakers' Rostrums, and Raised Daises. Fixed judges' benches, clerks' stations, speakers' rostrums and a minimum of one raised dais shall be adaptable and comply with 4.32. Clear floor space for a front approach shall be provided. The maximum height of controls and operating mechanisms shall be 48 in (1220 mm) and comply with 4.27.3 and 4.27.4. If the high forward reach is over an obstruction, reach and clearances shall be as shown in Figure 5(b).

Adaptable means that maneuvering clearances and other features (e.g., fixed controls) shall be designed into the space so that accessibility can easily be provided. For example, the judge's bench may be designed so that a ramp complying with 4.8 or a lift complying with 4.11 can easily be installed at a later date provided that the required maneuvering clearances are provided to approach, enter, and exit the ramp or lift. Maneuvering clearances must also allow an individual to open gates, maneuver at the bench (e.g., knee clearance), and reach any fixed controls (e.g., alarm buttons) and electrical outlets that are integral components of the design.

(5)* Fixed Bailiffs' Stations, Court Reporters' Stations and Litigants' Stations. Fixed or built-in stations, including tables for bailiffs, court reporters and litigants, shall provide clear floor space for a front approach and shall comply with 4.32. The maximum height of controls and operating mechanisms shall be 48 in (1220 mm) and comply with 4.27.3 and 4.27.4. If the high forward reach is over an obstruction, reach and clearances shall be as shown in Figure 5(b).

(6) Fixed Lecterns. Fixed lecterns shall comply with 4.32 and clear floor space for a front approach shall be provided. The maximum height of controls and operating mechanisms shall be 48 in (1220 mm) and comply with 4.27.3 and 4.27.4.

11.3 Jury Assembly Areas and Jury Deliberation Areas.

11.3.1 Where the following elements or spaces are provided in areas used for jury assembly or deliberation, each element or space shall be accessible and on an accessible route complying with 4.3:

(1) Refreshment Areas. Refreshment areas, kitchenettes and fixed refreshment dispensers shall comply with 9.2.2(7).

(2)* Fixed or Built-in Seating and Tables. At least 5 percent, but not less than one fixed or built-in seating and tables shall comply with 4.32. Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users.

(3) Drinking Fountains. Where provided in rooms covered under 11.3, there shall be a drinking fountain accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. This can be accomplished by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by other such means as would achieve the required accessibility for each group.

11.4 Courthouse Holding Facilities.

11.4.1 Holding Cells - Minimum Number. Where provided, facilities for detainees, including central holding cells and court-floor holding cells, shall comply with the following:

(1) Central Holding Cells. Where separate central holding cells are provided for adult male, juvenile male, adult female, and juvenile female, one of each type shall comply with 11.4.

(2) Court-Floor Holding Cells. Where separate court-floor holding cells are provided for adult male, juvenile male, adult female, and juvenile female, one of each type shall comply with 11.4. Where court-floor holding cells are provided, and are not separated by age or sex, courtrooms shall be served by at least one cell complying with 11.4.

11.4.2 Requirements for Accessible Cells. Accessible cells shall be on an accessible route complying with 4.3. Where provided, the following elements or spaces serving accessible cells shall be accessible and on an accessible route:

(1) Doors and Doorways. All doors and doorways to accessible spaces and on an accessible route shall comply with 4.13.

EXCEPTION: Doors and doorways shall be exempt from 4.13.6, 4.13.9, 4.13.11 and 4.13.12 in those areas where detainees are escorted by security personnel at all times.

(2) Restrooms. Toilet facilities shall comply with 4.22 and bathing facilities shall comply with 4.23. Where privacy screens are provided, they shall not intrude on the clear floor space required for fixtures or the accessible route.

(3) Beds. Beds shall have a minimum 36 in (915 mm) clear width maneuvering space located along one side. Where more than one bed is provided in a cell, the clear space provided at adjacent beds may overlap.

(4) Drinking Fountains and Water Coolers. Where provided, there shall be a drinking fountain accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. This can be accomplished by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by other such means as would achieve the required accessibility for each group.

(5) Fixed or Built-in Seating and Tables. At least one fixed or built-in seating and table or counter shall comply with 4.32.

(6) Fixed Benches. Fixed benches shall be a minimum of 24 in by 48 in (610 mm x 1220 mm) and be mounted at 17 in to 19 in (430 mm to 485 mm) above the finish floor. The structural strength of the bench attachments shall comply with 4.26.3.

11.4.3* Visiting Areas. The following elements, where provided, shall be accessible and located on an accessible route complying with 4.3.

11.5 Restricted and Secured Entrances

(1) Cubicles and Counters. If fixed cubicles are provided, at least five percent, but not less than one, of each side of the fixed cubicle shall comply with 4.32. Where a counter is provided without cubicles, a portion on both sides at least 36 in (915 mm) in length shall comply with 4.32.

(2) Partitions. Solid partitions or safety glass that separate visitors from detainees shall comply with 7.2(3).

(3) Signage. Accessible cubicles or counters shall be identified on each side by the International Symbol of Accessibility. This symbol shall be displayed as required in 4.30.7.

11.5 Restricted and Secured Entrances. Where provided, at least one restricted entrance and at least one secured entrance to the facility shall comply with 4.14, in addition to the entrances required by 4.1.3(8). Restricted entrances differ from public entrances in that they are used by judges, court personnel and other parties on a controlled basis. Secured entrances are used by detainees and detention officers. In addition, if direct access is provided for pedestrians from an enclosed parking garage to a restricted entrance, at least one direct entrance from the garage to the restricted entrance shall be accessible.

11.6 Security Systems. An accessible route complying with 4.3 shall be provided through fixed security barriers. Where security barriers incorporate equipment such as metal detectors, fluoroscopes, or other similar devices which cannot be made accessible, an accessible route shall be provided adjacent to such security screening devices to facilitate an equivalent path of travel.

EXCEPTION: Doors and doorways designed to be operated only by security personnel shall be exempt from 4.13.6, 4.13.9, 4.13.11 and 4.13.12.

11.7* Two-Way Communication Systems. Where a two-way communication system is provided to gain admittance to a facility or to restricted areas within the facility, the system shall provide both visible and audible signals and shall comply with 4.27.

11.8* Electrical Outlets, Wiring, and Conduit for Communication Systems.

(1) In judicial, legislative, or regulatory facilities, all courtrooms, hearing rooms, jury deliberation and jury orientation rooms, and meeting rooms designated for public use shall be provided with the following to support communication equipment for persons with vision and hearing impairments:

(a) Duplex electrical outlets; and

(b) Wiring, conduit, or raceways.

(2) Within the courtroom, electrical outlets and wiring, conduit, or raceways shall be provided to serve the litigants' stations, clerk's station, court reporter's station, jury box, witness stand, and the judge's bench.

(3) These electrical outlets shall be provided in addition to those convenience outlets required by applicable State or local codes.

11.9* Permanently Installed Assistive Listening Systems. Permanently installed assistive listening systems complying with 4.33.6 and 4.33.7 shall be provided in judicial, legislative and regulatory facilities as follows:

(1)* Judicial Facilities. In judicial facilities, 50 percent, but not less than one, of each type of courtroom (at least one of which shall have a jury box, where one is provided) shall have a permanently installed assistive listening system. In addition, 50 percent, but not less than one, of each of the following types of rooms shall have a permanently installed assistive listening system: hearing rooms, jury deliberation rooms, and juror orientation rooms.

(2)* Legislative and Regulatory Facilities. In legislative and regulatory facilities, 50 percent, but not less than one, of each of the following types of rooms shall have a permanently installed assistive listening system: chambers, and hearing or meeting rooms which are designated for public use and where legislative or regulatory business is conducted. In addition, where separate chambers are provided for a bicameral legislature (i.e., house and senate), each chamber shall have a permanently installed assistive listening system.

(3) Receivers. The minimum number of receivers shall be 4 percent of the room occupant load, as determined by applicable State or local codes, but not less than two, whichever is greater.

(4) Signage. An informational sign complying with 4.30.1, 4.30.2, 4.30.3, 4.30.5 and 4.30.7(4) shall be posted in a prominent place indicating the availability of assistive listening systems, computer-aided transcription system, or other communication equipment for persons with vision or hearing impairments.

12. DETENTION AND CORRECTIONAL FACILITIES.

12.1* General. This section applies to jails, holding cells in police stations, prisons, juvenile detention centers, reformatories, and other institutional occupancies where the occupants are under some degree of restraint or restriction for security reasons. Except as specified in this section, detention and correctional facilities shall comply with the applicable requirements of 4.1 through 4.35. All public and common use areas serving accessible cells or rooms are required to be designed and constructed to comply with section 4.

12.2 Entrances.

12.2.1 Secured Entrances. Where provided, at least one secured entrance shall comply with 4.14. This requirement is in addition to the entrances that are required to be accessible by 4.1.3(8). Secured entrances are those entrances used only by inmates or detainees and security personnel and not the general public.

12.2.2 Security Systems. Where security systems are provided at public entrances required to be accessible by 4.1.3(8), an accessible route complying with 4.3 shall be provided through fixed security barriers. Where security barriers incorporate equipment such as metal detectors, fluoroscopes, or other similar devices which cannot be made accessible, an accessible route shall be provided adjacent to such security screening devices to facilitate an equivalent path of travel.

EXCEPTION: Doors and doorways designed to be operated only by security personnel shall be exempt from 4.13.6, 4.13.9, 4.13.11 and 4.13.12.

12.3* Visiting Areas. In non-contact visiting areas where inmates or detainees are separated from visitors, the following elements, where provided, shall be accessible and located on an accessible route complying with 4.3:

(1) Cubicles and Counters. If fixed cubicles are provided, at least five percent, but not less than one, of each side of the fixed cubicle shall comply with 4.32. Where a counter is provided without cubicles, a portion on both sides at least 36 in (915 mm) in length shall comply with 4.32.

(2) Partitions. Solid partitions or safety glass separating visitors from inmates or detainees shall comply with 7.2(3).

(3) Signage. Accessible cubicles or counters shall be identified on each side by the International Symbol of Accessibility. This symbol shall be displayed as required in 4.30.7.

12.4 Holding and Housing Cells or Rooms: Minimum Number.

12.4.1* Holding Cells and General Housing Cells or Rooms. [Reserved]

12.4.2 Special Holding and Housing Cells or Rooms. [Reserved]

12.4.3 Accessible Cells or Rooms for Persons with Hearing Impairments. [Reserved]

12.4.4 Medical Care Facilities. Medical care facilities providing physical or medical treatment or care shall comply with the applicable requirements of section 6, if persons may need assistance in emergencies and the period of stay may exceed twenty-four hours.

12.4.5 Alterations to Cells or Rooms. When cells or rooms are being altered in an existing facility, or portion thereof, at least [percentage specified for new construction] of the number being altered shall be made accessible according to 12.4.1 until the number of accessible cells or rooms equals the total number of accessible cells or rooms required for the facility.

12.5 Requirements for Accessible Cells or Rooms.

12.5.1 General. Cells or rooms required to be accessible by 12.4 shall comply with 12.5.

12.5.2 Minimum Requirements. Accessible cells or rooms shall be on an accessible route complying with 4.3. Where provided, the following elements or spaces serving accessible cells or rooms shall be accessible and connected by an accessible route. At least one of each type of common area, amenity, space, or element provided for other housing cells or rooms in the same category of housing shall be accessible.

(1) Doors and Doorways. All doors and doorways on an accessible route shall comply with 4.13.

EXCEPTION: Doors and doorways in those areas where detainees or inmates are escorted by security personnel at all times shall be exempt from 4.13.6, 4.13.9, 4.13.11 and 4.13.12.

(2) Restrooms. At least one toilet facility shall comply with 4.22 and one bathing facility shall comply with 4.23. Where privacy screens are provided, they shall not intrude on the clear floor space required for fixtures and the accessible route.

(3) Beds. Beds shall have a minimum 36 in (915 mm) clear width maneuvering space located along one side. Where more than one bed is provided in a room or cell, the clear space provided at adjacent beds may overlap.

(4) Drinking Fountains and Water Coolers. Where provided, there shall be a drinking fountain accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. This can be accomplished by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by providing other such means as would achieve the required accessibility for each group.

(5) Fixed or Built-in Seating or Tables. Fixed or built-in seating or tables within, or serving, accessible cells or rooms shall comply with 4.1.3(18).

(6) Fixed Benches. Fixed benches shall be a minimum of 24 in by 48 in (610 mm x 1220 mm) and be mounted at 17 in to 19 in (430 mm to 485 mm) above the finish floor. The structural strength of the bench attachments shall comply with 4.26.3.

(7) Storage. At least one of each type of fixed or built-in storage facility provided, such as cabinets, shelves, closets, and drawers, shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.

(8) Controls. All controls intended for operation by inmates shall comply with 4.27.

(9) Room accommodations for persons with hearing impairments required by 12.4.3 and complying with 12.6 shall be provided in accessible cells or rooms.

12.6 Visual Alarms and Telephones.

12.6.1 General. Auxiliary visual alarms complying with 4.28.4 shall be provided in cells or rooms which are served by audible emergency warning systems and which house inmates or detainees who are allowed independent means of egress. Permanently installed telephones shall have volume controls complying with 4.31.5.

12.6.2 Equivalent Facilitation. For purposes of this section, equivalent facilitation shall include the installation of electrical outlets (including outlets connected to a facility's central alarm system) and telephone wiring in the cell or room to enable inmates or detainees with hearing impairments to utilize portable visual alarms and communication devices made available by the operator of the facility.

13. ACCESSIBLE RESIDENTIAL HOUSING.

Except as specified in this section, accessible residential housing shall comply with the applicable requirements of 4.1 through 4.35. All public and common use areas shall be designed and constructed to comply with

section 4. "Public use areas" pertains to interior or exterior spaces of a building or facility that are made available to the general public. As used in this section, "common use areas" means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof; these areas include, but are not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

EXCEPTION: Where multiple recreational facilities, such as tennis courts, are provided for public or common use, then at least one of each type shall be designed and constructed to comply with section 4.

13.1* General. This section applies to single-family and multifamily dwelling unit facilities constructed or altered by, for, or on behalf of a State or local government entity. For purposes of this section, the term "dwelling unit" means a single unit which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing and sleeping.

13.2 Minimum Number and Dispersion.

13.2.1 Minimum Number. Accessible dwelling units shall be provided as follows:

(1) Five percent of the total number of dwelling units in a facility, but not less than one, shall comply with 13.3, 13.4, and 13.5.

(a) Dwelling Units with Roll-in Showers. [Reserved]

(b) Dwelling Units with Bathtubs. [Reserved]

(2) In addition to those accessible dwelling units required by 13.2.1(1), two percent of the total number of dwelling units in a facility, but not less than one, shall comply with 13.4 and 13.5.

(3) This paragraph does not require an increase in the total number of dwelling units planned for a facility. If the total number of dwelling units is one, that dwelling unit shall meet the requirements of 13.2.1(1).

13.2.2* New Construction: Dispersion. Accessible dwelling units shall be dispersed throughout the facility so as to provide people with disabilities a choice of housing types comparable to and integrated with those available to other members of the public. In dispersing accessible units, the following factors are to be considered: unit size and configuration, cost, amenities within or serving dwelling units, and location with respect to amenities.

13.2.3* Alterations: Minimum Number and Dispersion.

(1) Minimum Number: When dwelling units are altered in an existing facility, five percent, but not less than one, of the dwelling units altered shall comply with the requirements of 13.3, 13.4 and 13.5 for each alteration until the number of accessible dwelling units in each facility equals the number required to be accessible by 13.2.1(1). In addition, two percent but not less than one of the altered dwelling units shall comply with the requirements of both 13.4 and 13.5 until the number of accessible dwelling units equals the number required to be accessible by 13.2.1(2).

(2) Dispersion: When existing dwelling units are altered and are required to be accessible they shall be dispersed according to 13.2.2, to the maximum extent feasible.

13.3 Requirements for Accessible Dwelling Units.

13.3.1 General. The requirements of 13.3 apply to dwelling units required to be accessible by 13.2.

13.3.2* Minimum Requirements. An accessible dwelling unit shall be on an accessible route complying with 4.3 and shall have the following accessible elements and spaces:

(1) Ancillary Areas. Spaces and facilities serving individual accessible dwelling units, including but not limited to, entry walks, trash disposal facilities, and mail boxes, where provided, shall comply with 4.1 through 4.35.

(2) Maneuvering Space. Accessible spaces shall have maneuvering space complying with 4.2.3 and surfaces complying with 4.5.

(3) Accessible Route. At least one accessible route complying with 4.3 shall connect the accessible entrances with all accessible spaces and elements within the accessible dwelling

13.3 Requirements for Accessible Dwelling Units

unit. This is not intended to require an elevator within an accessible dwelling unit as long as the spaces identified in 13.3.2 (11), (12), and (13) are connected by an interior accessible route.

(4) Parking. Parking spaces complying with 4.6 shall be on an accessible route and shall be provided in accordance with the following:

(a) Where parking is provided for residents, one accessible parking space shall be provided for each dwelling unit required to be accessible by 13.2.1(1); and

(b) Where parking is provided for visitors, 2 percent of the spaces, but not less than one, shall be accessible.

EXCEPTION: Where parking spaces are assigned to specific dwelling units, the requirements for signage under 4.6.4 apply only during the tenancy of a person with a disability.

(5) (i) Elevators. If provided, elevators shall comply with 4.10.

(ii) Equivalent Facilitation. A platform lift complying with 4.11 may be used in lieu of an elevator complying with 4.10 to connect levels within an individual dwelling unit.

(6) Doors. Doors intended for passage to and in accessible spaces shall comply with 4.13.

(7) Entrances. At least one accessible entrance to the dwelling unit shall comply with 4.14.

(8) Storage. At least one of each type of fixed or built-in storage facility in accessible spaces in dwelling units, including cabinets, shelves, closets, and drawers shall comply with 4.25.

(9) Controls. All controls in accessible spaces shall comply with 4.27. Those portions of heating, ventilating, and air conditioning equipment requiring regular or periodic maintenance and adjustment by the resident of a dwelling unit shall comply with 4.27.

EXCEPTION: This requirement shall not apply to controls, such as air distribution registers, which must be placed in or close to ceilings for proper air circulation.

(10) Alarms. If emergency warning systems are provided, they shall include audible alarms complying with 4.28.2 and auxiliary alarms complying with 4.28.4.

(11) Bathrooms. At least one full bathroom shall comply with 13.3.3. A full bathroom shall include a water closet, a lavatory, and a bathtub or a shower.

(12) Kitchens. The kitchen shall comply with 13.3.4.

(13) Living Spaces. The following spaces shall be accessible and shall be on an accessible route:

(a) The living area.

(b) The dining area.

(c) The sleeping area or bedroom as follows:

(i) In dwelling units with one bedroom, one bedroom.

(ii) In dwelling units with more than one bedroom, at least two bedrooms.

(d) Patios, decks, terraces, balconies, carports, and garages, if provided on an accessible level within the dwelling unit.

EXCEPTION: The requirements of 4.13.8 and 4.3.8 do not apply to patios, decks, terraces, or balconies where it is necessary to utilize a higher door threshold or a change in level to protect the integrity of the unit from wind or water damage. Where the exception results in level changes at patios, decks, terraces or balconies, equivalent facilitation shall be provided. Equivalent facilitation in residential housing may consist of providing raised decking or a ramp to provide accessibility.

(14) Laundry Facilities. If laundry facilities are provided, they shall comply with 13.3.5 and shall be located on an accessible route complying with 4.3.

13.3.3 Bathrooms. Accessible bathrooms shall be on an accessible route and shall comply with the following:

(1) Doors. All doors to accessible bathrooms shall comply with 4.13 and shall not swing into the clear floor space required for any fixture.

(2) Water Closets. Water closets shall comply with 4.16, except that the height of the water closet shall be between 15 in (380 mm) and 19 in (485 mm) measured to the top of the toilet seat.

(3) Lavatories and Mirrors. Lavatories and mirrors shall comply with 4.19. If medicine cabinets are provided, at least one shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor. Clear floor space complying with 4.2.4 shall be provided at the medicine cabinet.

(4) Bathtubs. If a bathtub is provided, it shall comply with 4.20.

(5) Showers. If a shower is provided, it shall comply with 4.21.

(6) Bathtub and Shower Enclosures. Enclosures for bathtubs or shower stalls shall not obstruct controls or transfer from wheelchairs onto shower or bathtub seats. Enclosures on bathtubs shall not have tracks mounted on their rims.

(7) Fixtures and Controls. The accessible fixtures and controls required in an accessible bathroom shall be on an accessible route. The clear floor space at fixtures and controls and the accessible route may overlap.

(8) Maneuvering Space. Maneuvering space complying with 4.2.3 shall be provided.

13.3.4 Kitchens. Accessible kitchens and their components shall be designed to allow for the operation of cabinet and/or appliance doors so that all cabinets and appliances are accessible and usable. Accessible kitchens shall be on an accessible route complying with 4.3 and shall comply with the following:

(1) Maneuvering Clearance. Clearances between all opposing base cabinets, counter tops, appliances, or walls shall be 40 in (1015 mm) minimum, except in U-shaped kitchens, where such clearance shall be 60 in (1525 mm) minimum.

(2) Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or a parallel approach by a person using a wheelchair shall be provided at all appliances in the kitchen, including the range or cooktop, oven, refrigerator/freezer, dishwasher, and trash compactor. Maneuvering space complying with 4.2.3 shall be provided. Laundry equipment located in the kitchen shall comply with 13.3.5.

(3) Controls. All controls in kitchens shall comply with 4.27.

(4) Counters. At least one 30 in (760 mm) length of counter shall provide a work surface that complies with the following requirements:

(a) The counter shall be mounted at a maximum height between 28 in to 34 in (710 to 865 mm) above the floor, measured from the floor to the top of the counter surface, or shall be adjustable to provide alternative heights of 28 in, 32 in, 34 in and 36 in (710 mm, 815 mm, 865 mm and 915 mm) measured from the floor to the top of the counter surface.

(b) Counter thickness and supporting structure shall be 2 in (50 mm) maximum over the required clear floor space.

(c) A clear floor space of 30 in by 48 in (760 mm by 1220 mm) shall allow a forward approach to the counter. Nineteen inches (485 mm) maximum of the clear floor space may extend underneath the counter. The knee space shall have a minimum clear width of 30 in (760 mm) and a minimum clear depth of 19 in (485 mm).

(d) There shall be no sharp or abrasive surfaces under such counters.

(5)* Sinks. The sink and its surrounding counter shall comply with 4.24. The sink may be adjustable to provide alternative heights of 28 in, 32 in, 34 in, and 36 in (710 mm, 815 mm, 865 mm and 915 mm), measured from the floor to the top of the counter surface or sink rim. The total length of the sink and counter area shall be 30 in (760 mm) minimum. If the sink is adjustable, rough-in plumbing shall be located to accept connections of supply and drain pipes for alternative mounting heights.

(6)* Cooktops. Cooktops shall comply with 13.3.4(2) and 13.3.4(3). If cooktops have knee spaces underneath, they shall be insulated or otherwise protected on the exposed contact surfaces to prevent burns, abrasions, or electric shock. The clear floor space may overlap

the knee space, if provided, by 19 in (485 mm) maximum. The location of controls for cooktops shall not require reaching across burners.

(7)* Ovens. Ovens, including those with cooktops, shall comply with 13.3.4(2) and 13.3.4(3). Ovens shall be of the self-cleaning type or be located adjacent to an adjustable height counter with knee space below. (See Fig. 52). For side opening ovens, the door latch side shall be next to the open counter space, and there shall be a pull-out shelf under the oven extending the full width of the oven and not less than 10 in (255 mm) when fully extended. Wall ovens having knee spaces underneath shall be insulated or otherwise protected on the exposed contact surfaces to prevent burns, abrasions, or electric shock. Where knee space is provided, the clear floor space may overlap the knee space by 19 in (485 mm) maximum. Ovens shall have controls on front panels and may be located on either side of the door.

(8)* Refrigerators and Freezers. Refrigerators and freezers shall comply with 13.3.4(2) and 13.3.4(3). Provision shall be made for refrigerators which are:

(a) Of the vertical side-by-side refrigerator and freezer type; or

(b) Of the over-and-under type and meet the following requirements:

(i) Have at least 50 percent of the freezer space no higher than 54 in (1370 mm) above the floor.

(ii) Have 100 percent of the refrigerator space and controls no higher than 54 in (1370 mm) above the floor.

Freezers with less than 100 percent of the storage volume within the limits specified in 4.2.5 and 4.2.6 shall be the self-defrosting type.

(9) Dishwashers. Dishwashers shall comply with 13.3.4(2) and 13.3.4(3). Dishwashers shall have all rack space accessible from the front of the machine for loading and unloading dishes.

(10)* Kitchen Storage. Kitchen storage cabinets, drawers, and shelf areas shall comply with 4.25 and shall have the following features:

(a) Maximum height shall be 48 in (1220 mm) for at least one shelf of all cabinets and storage shelves mounted above work counters.

(b) Door pulls or handles for wall cabinets shall be mounted as close to the bottom of cabinet doors as practicable. Door pulls or handles for base cabinets shall be mounted as close to the top of cabinet doors as possible.

13.3.5 Laundry Facilities. If laundry equipment is provided within individual accessible dwelling units, or if separate laundry facilities serve one or more accessible dwelling units, then they shall meet the following requirements:

(1) Location. Laundry facilities and laundry equipment shall be on an accessible route.

(2) Washing Machines and Clothes Dryers. A minimum of one washing machine and clothes dryer in each common use laundry room shall be front loading.

(3) Controls. Laundry equipment controls on front loading machines shall comply with 4.27.

13.4 Requirements for Dwelling Units Accessible to Persons with Hearing Impairments.

13.4.1 General. In dwelling units required to be accessible by 13.2.1, auxiliary visual alarms complying with 4.28.4 shall be provided if an emergency warning system or single station emergency alarm is provided. Visual notification devices shall also be provided in living and sleeping rooms to alert occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to auxiliary visual alarm signal appliances. Permanently installed telephones shall have volume controls complying with 4.31.5. An accessible electrical outlet within 48 in (1220 mm) of each telephone connection shall be provided to facilitate the use of a text telephone.

13.4.2 Equivalent Facilitation. For purposes of this section, equivalent facilitation shall include the installation of electrical outlets (including outlets connected to a facility's central alarm system) and telephone wiring in sleeping rooms to enable persons with hearing impairments to utilize portable visual alarms and communication devices provided by the operator of the facility.

13.5 Requirements for Dwelling Units Accessible to Persons with Visual Impairments: Reserved.

14. PUBLIC RIGHTS-OF-WAY.

14.1* General. In addition to the requirements of 4.1 through 4.35, unless otherwise provided in this section, all areas, elements, and facilities in the public right-of-way intended for pedestrian access, circulation, and use that are constructed or installed on or adjacent to a sidewalk within the limits or scope of a public improvement project shall comply with 14.

14.1.1 Definitions.

Continuous Passage. A continuous unobstructed pedestrian circulation path within a sidewalk connecting pedestrian areas, elements, and facilities covered by Section 14.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

***Public Improvement Project.** A public works project consisting of the construction, alteration or installation of site improvements or amenities in the public right-of-way by or on behalf of a State or local government.

***Sidewalk.** A walk in the public right-of-way along a vehicular way that is part of a pedestrian circulation network.

Site Infeasibility. Existing physical or site constraints which prohibit the incorporation of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction in the public right-of-way and which are necessary to provide accessibility.

Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

14.2 Sidewalks.

14.2.1* Minimum Requirements. Sidewalks, or a continuous passage along their length, shall provide a clear width of 36 in (915 mm) minimum, connect to the accessible route required by 4.1.2(1) and elements covered by section 14, and shall comply with the following requirements:

(1)* Slope. The least possible running slope shall be provided and shall not exceed 1:12. Cross slopes shall not exceed 1:50 (2 percent). Handrails are not required on sidewalks.

EXCEPTION: Where site infeasibility precludes a running slope of 1:12, the least possible running slope shall be provided.

(2) Passing Space. Sidewalks less than 60 in (1525 mm) in continuous width shall provide passing space at reasonable intervals not to exceed 200 ft (61 m). Passing space shall provide a 60 in by 60 in (1525 mm by 1525 mm) minimum clear space or a T-shaped turning space as shown in Figure 3 and may be provided at landings at new building entrances required by ADAAG 4.1.2(1) or at the intersection of two sidewalks. The passing space at the intersection of two sidewalks shall have the minimum possible running slope and a cross slope that does not exceed 1:50 (2 percent).

(3) Surfaces. Surfaces shall be firm, stable and slip resistant. Differences in level up to 1/4 in (6.5 mm) may be vertical and without edge treatment. (See Fig. 7(c)). Differences in level between 1/4 in and 1/2 in (6.5 mm and 13 mm) shall be beveled with a slope no greater than 1:2. (See Fig. 7(d)). Gratings shall have spaces no greater than 1/2 in (13 mm) wide in one direction. (See Fig. 8(g)). Gratings with elongated openings shall be placed so that the long dimension is perpendicular to the dominant direction of travel. (See Fig. 8(h)).

(4)* Separation. Sidewalks shall be separated from vehicular ways by curbs, planted parkways, or other barriers, which shall be continuous except where interrupted by driveways, alleys, or connections to accessible elements.

(5) Bus stops. Where bus passenger loading areas or bus shelters are provided on or adjacent to sidewalks, they shall comply with 10.2.

14.2.2 Historic and Special Use Sidewalks (Reserved).

14.2.3 Street Identification and Other Pedestrian Signage. Where provided for pedestrian use, informational and directional

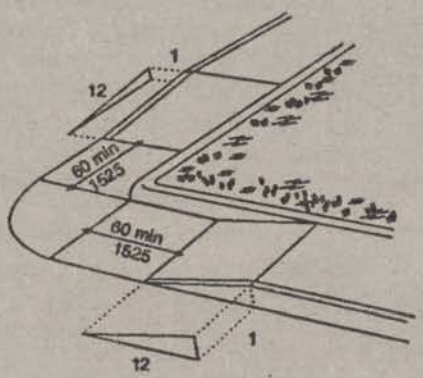
14.2 Sidewalks

signage, and street identification signs shall comply with 4.30.2, 4.30.3, and 4.30.5.

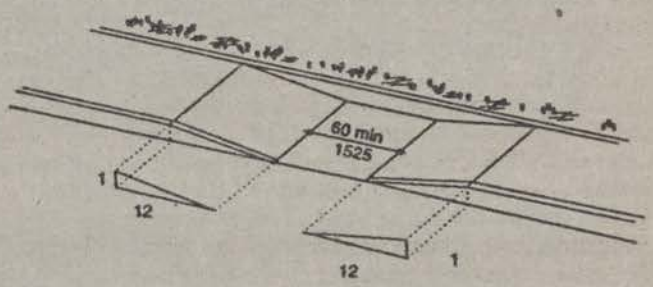
14.2.4* Protruding Objects.

(1) General. Objects projecting from walls (e.g., signs, telephones, canopies) with their leading edges between 27 in and 80 in (685 mm and 2030 mm) above the finished sidewalk shall protrude no more than 4 in (100 mm) into any portion of a sidewalk. Objects mounted with their leading edges located less than 27 in (685 mm) or more than 80 in (2030 mm) above the finished sidewalk may project any amount provided that they do not reduce the required continuous passage along the sidewalk. Free-standing objects mounted on posts or pylons may overhang their mountings a maximum of 12 in (305 mm) when located between 27 in and 80 in (685 mm and 2030 mm) above the ground or finished sidewalk provided that they do not reduce the required continuous passage along the sidewalk.

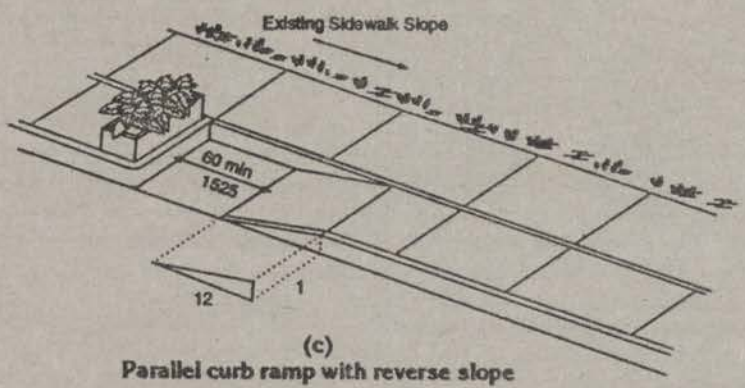
(2) Head Room. Guardrails or other barriers shall be provided when the vertical clearance of an area along or adjoining a sidewalk or continuous passage is less than 80 in (2030 mm) high. Leading edges of such barriers shall be located a maximum of 27 in (685 mm) above the finished sidewalk, as shown in Figure 8(c-1).



(a)
Parallel curb ramp in narrow sidewalk at intersection

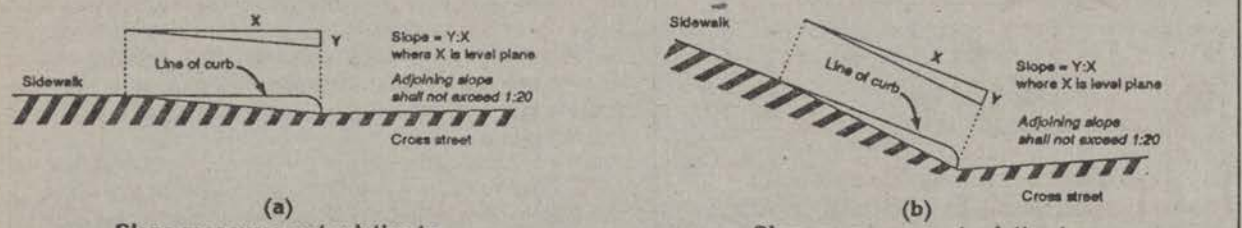


(b)
Parallel curb ramp in narrow sidewalk at midblock crossing



(c)
Parallel curb ramp with reverse slope

Fig. 58
Examples of Parallel Curb Ramps



(a)
Slope measurement relative to level sidewalk/street

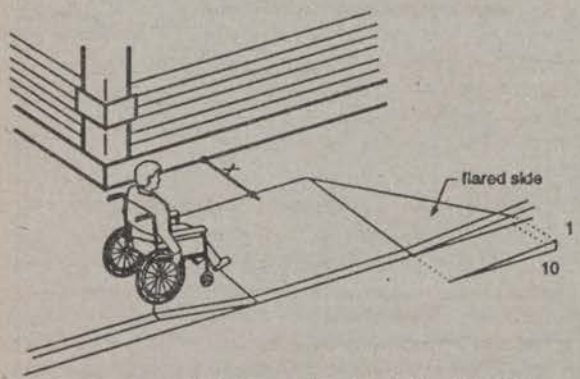
(b)
Slope measurement relative to sloping sidewalk/street

Fig. 59
Measurement of Curb Ramp Slopes

(3) Clear Width. Fixed objects not covered by paragraph (1) shall not reduce the continuous passage required by 14.2.1.

14.2.5 Sidewalk Curb Ramps and Other Sloped Areas.

(1) Location. A curb ramp or other sloped area complying with 14.2.5 shall be provided wherever a pedestrian circulation path crosses a curb or other barrier (e.g., parkway, berm, or gutter) to a street crossing and shall be connected to a continuous passage. Handrails are not required on sidewalk curb ramps or other sloped areas connecting to street crossings.



1. X shall be equal to or greater than 36 in (915 mm).
2. If X is less than 48 in (1220 mm), then the slope of the flared sides shall not exceed 1:12.

Fig. 60
Level Landing at Top of Curb Ramp

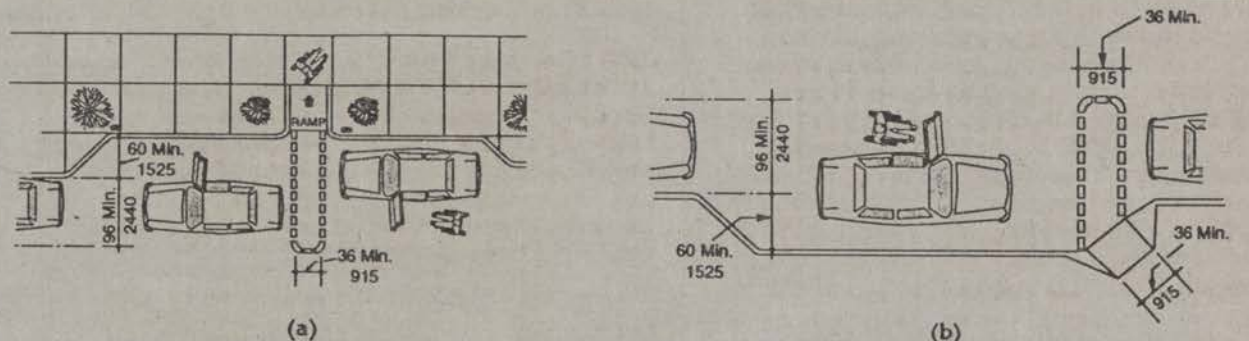
(2) Slope. The least possible slope shall be used for any curb ramp or other sloped area. The maximum slope shall be 1:12 when measured as shown in Figure 59(a).

EXCEPTION: Where site infeasibility (e.g., steeply sloped roadways or constrained right-of-way) precludes the installation of a curb ramp, a sloped area parallel to the curb with its gradient measured according to Figure 59(a), may be provided. (See Fig. 58). The least possible slope shall be provided for any parallel sloped area. The maximum slope shall be 1:12. The cross slope shall be no greater than 1:50 (2 percent). A landing which has a minimum of 60 in (1525 mm) clear in the direction of the running slope shall be provided at the bottom of the sloped area. The surface slope of the landing shall not exceed 1:50 (2 percent) in all directions.

(3) Width. Curb ramps or other sloped areas shall be 36 in (915 mm) wide minimum, exclusive of flared sides.

(4) Landings. A landing the width of the curb ramp and 48 in (1220 mm) in length shall be provided at the top of the curb ramp or other sloped area and shall be connected to the continuous passage. The surface slope of landings shall not exceed 1:50 (2 percent) in all directions.

EXCEPTION 1: Where site infeasibility precludes the installation of a 48 in (1220 mm) landing length at the top of the curb ramp or other sloped area, a landing a minimum of 36 in (915 mm) in length may be provided. (See Fig. 60).



(a)

Two accessible parallel parking spaces in series, separated by an access aisle, with both driver-side and passenger-side access demonstrated.

(b)

Single accessible parallel parking space with driver-side access demonstrated; passenger side access can be provided by parking in line with standard on-street spaces.

Fig. 61

Examples of Parallel On-Street Parking

EXCEPTION 2: Where the 36 in (915 mm) level landing allowed in Exception 1 above, or a parallel ramp complying with 14.2.5(2) Exception cannot be provided, a sloped area connecting to the street crossing with its gradients (i.e., running slope, cross slope, side flare slope) measured from a plane parallel to that of the street, as shown in Figure 59(b), may be provided. The least possible slope shall be used for any sloped area connecting to a street crossing. The maximum slope shall be 1:12. The cross slope shall be no greater than 1:50 (2 percent).

(5) Sides of Curb Ramps or Other Sloped Areas. Curb ramps or other sloped areas located where pedestrians must walk across the ramp, or where curb ramps are not protected by returned curbs, shall have flared sides. The slope of the flare shall be 1:10 maximum. Where the landing at the top is at least 36 in (915 mm) but less than 48 in (1220 mm), the slope of the flares shall be 1:12 maximum. (See Fig. 60). Curb ramps or other sloped areas with returned curbs may be used where pedestrians would not normally walk across the ramp from the side. (See Fig. 12(b)).

(6) Surface. The surfaces of curb ramps or other sloped areas shall be firm, stable and slip resistant.

(7) Detectable Warnings. [Reserved]

(8) Adjacent Surfaces. Counter slopes of adjoining gutters and road surfaces connecting to the curb ramp or sloped area shall be 1:20 maximum. (See Fig. 59(a)). Transitions from curb ramps to gutters or streets shall be flush and free of abrupt changes. Gratings located in adjacent walking surfaces shall have spaces no greater than 1/2 in (13 mm) wide in one direction. (See Fig. 8(g)). Gratings with elongated openings shall be placed so that the long dimension is perpendicular to the dominant direction of travel. (See Fig. 8(h)).

(9) Location at Marked Crossings. Curb ramps and other sloped areas at marked crossings shall be wholly contained within the markings, excluding any flared sides. (See Fig. 15).

(10) Obstructions. Curb ramps and other sloped areas shall be protected or located to prevent their obstruction by parked vehicles.

(11) Built-up Curb Ramps or Other Sloped Areas. Built-up curb ramps or other sloped areas shall be located so that they do not project into vehicular traffic lanes or into parking spaces or access aisles. (See Fig. 13).

(12) Diagonal Curb Ramps or Other Sloped Areas. Diagonal (or corner-type) curb ramps or other sloped areas with returned curbs or other well-defined edges shall have the edges parallel to the direction of pedestrian flow. Bottoms of

diagonal curb ramps or other sloped areas shall have a 48 in (1220 mm) minimum clear space as shown in Figure15(c) and (d). Diagonal curb ramps or other sloped areas provided at marked crossings shall have the 48 in (1220 mm) minimum clear space within the markings. (See Fig. 15(c) and (d)). Diagonal curb ramps or other sloped areas with flared sides shall have a segment of straight curb at least 24 in (610 mm) long located on each side of the curb ramp or other sloped area and within the marked crossing. (See Fig. 15(c)).

(13) Islands. Raised islands in crossings shall be cut through level with the street or have curb ramps or other sloped areas at both sides and a level area 48 in (1220 mm) long minimum and a minimum of 36 in (915 mm) wide in the part of the island intersected by the crossings. (See Fig. 15(a) and (b)).

14.2.6 Crossing Controls.

(1) Controls. Where provided, buttons shall be raised or flush and be a minimum of 3/4 in (19 mm) in the smallest dimension. The force required to activate controls shall be no greater than 5 lbf (22.2N).

(2) Location. Where provided, controls shall be located as close as possible to the curb ramp and, to the maximum extent feasible, shall permit operation from a level area immediately adjacent to the controls.

(3) Mounting Height. Where provided, pedestrian-actuated crossing controls shall be a maximum of 48 in (1220 mm) above the sidewalk.

(4) Surface. A firm, stable and slip resistant area a minimum of 30 in by 48 in (915 mm by 1220 mm) shall be provided to allow for a forward or parallel approach to the controls.

14.2.7* Marked Crossings. Where provided, marked crossings shall be delineated with contrasting markings or materials (e.g., paint, brick, tile).

14.2.8 Pedestrian Overpasses and Underpasses. Grade-separated pedestrian overpasses and underpasses shall be connected to a sidewalk or other pedestrian circulation path by means of a ramp or elevator complying with 4.8 or 4.10 or, where permitted by 4.1.3(5), a platform lift (wheelchair lift) complying with 4.11.

14.3* Drinking Fountains, Telephones, Toilet Facilities, Fixed Seating, Tables and Benches. Where provided on or adjacent to a sidewalk as part of a public improvement project, the following elements shall be reasonably dispersed within the project area, taking into consideration the proximity and number of existing accessible elements:

(1) Drinking Fountains. At least 50 percent, but not less than one, of each drinking fountain provided shall comply with 4.15. Where only one drinking fountain is provided it shall be accessible to individuals who use wheelchairs in accordance with 4.15 and to those who have difficulty bending or stooping. This can be accomplished by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler, or by other such means as would achieve the required accessibility for each group.

(2) Public Pay Telephones. Where single unit public pay telephones are provided, at least 50 percent, but not less than one, shall comply with 4.31.2 through 4.31.8. Where a bank of telephones (two or more adjacent public telephones, often installed as a unit) is provided, at least one telephone per bank shall comply with 4.31.2 through 4.31.8. Where two or more banks of telephones are provided, at least one telephone complying with 4.31.2 through 4.31.8 shall be mounted with the highest operable part no higher than 48 in (1220 mm). In addition, 25 percent, but not less than one, of all other public telephones provided shall be equipped with a volume control and shall be dispersed among all types of public telephones. Signage complying with applicable provisions of 4.30.7 shall be provided.

(3) Single User Toilet Facilities. At least 50 percent, but not less than one, of fixed single user toilet facilities shall comply with 4.22. Signage complying with 4.30.7 shall be provided on accessible units. In addition, signage complying with 4.30.2, 4.30.3, and 4.30.5 shall be provided on the inaccessible units indicating the location of the nearest accessible unit.

(4) Fixed Seating, Tables, and Benches. At least five percent, but not less than one, of the fixed seating and tables provided in a public improvement project shall comply with 4.32. At least five percent of fixed benches provided in a public improvement project shall have a minimum 24 in by 48 in (610 mm by 1220 mm) seating area, mounted 17 in to 19 in (430 mm to 485 mm) above the finished surface. Clear floor space shall be provided alongside the bench to allow a person using a wheelchair to make a parallel transfer onto the bench. The structural strength of the bench and attachments shall comply with 4.26.3.

14.4 Vehicular Ways and Facilities.

14.4.1 On-Street Parking. Where new on-street paid or time-limited parking is provided and designated in districts zoned for business uses, accessible on-street parking spaces shall be provided in accordance with the table in 4.1.2(5)(a). A 60 in (1525 mm) wide minimum access aisle shall be provided. The driving lane shall not encroach on the required access aisle. (See Fig. 61).

(1) Curb Ramps. A curb ramp or other sloped area complying with 14.2.5 shall connect the access aisle to the sidewalk by a continuous passage which is a minimum of 36 in (915 mm) wide.

(2)* Location. Accessible on-street parking spaces shall be dispersed throughout the project area.

(3) Signage. Accessible parking spaces shall be designated as reserved by a sign that complies with 4.30.7. Such signs shall be located so as to be visible from a driver's seat.

(4) Parking Meters. Where provided, parking meter controls shall be a maximum of 48 in (1220 mm) above the sidewalk or pedestrian circulation path. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2N). A firm, stable and slip-resistant area a minimum of 30 in by 48 in (760 mm by 1220 mm), with the least possible slope, shall be provided at the controls and shall be connected to the sidewalk by a continuous passage that is a minimum of 36 in (915 mm) wide.

14.4.2 Roadside Emergency Communications Systems.

(1) Controls. Where provided, controls and operating mechanisms at roadside emergency communications system call boxes shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The highest operable part shall be at 54 in (1370 mm) above the finished grade at the call box location. The force required to activate controls shall be no greater than 5 lbf (22.2N).

(2) Communications. The system shall accommodate both visual and auditory acknowledgement of call receipt and shall not require voice communication.

(3)* Surface. A firm, stable, slip resistant surface a minimum of 30 in by 48 in (760 mm by 1220 mm) shall be provided a maximum of 10 in (255 mm) from the vertical plane of the face of the call box and shall be connected to the roadway shoulder, sidewalk, or pedestrian path by a continuous passage that is a minimum of 36 in (915 mm) wide.

14.5 Alterations. If existing elements are altered in the scope of a public improvement project, they shall be altered to comply with the applicable provisions of 4.1.6 and section 14.

14.6 Temporary Work. Construction and repair projects within the public right-of-way that affect pedestrian circulation elements, routes, or facilities shall comply with 4.1.1(4).

(1) Construction sites in the public right-of-way shall be protected with barriers to warn of hazards on the circulation path.

(2) The temporary circulation path from building entrances along a sidewalk or continuous passage to the nearest accessible street crossing shall be clearly marked.

Appendix

APPENDIX:

* * * * *

A7.0 Business and Mercantile.

A7.2(3)(iii) Counter or Teller Windows with Partitions. Methods of facilitating voice communication may include grills, talk-thru baffles, and other devices mounted directly into the partition which users can speak directly into for effective communication. Such methods should be designed or placed so that they can be used at both a standard height and a lower height appropriate for a person in a seated position.

A7.2(4) Assistive Listening Devices. *At all sales and service counters, teller windows, box offices, and information kiosks where a physical barrier separates service personnel and customers, it is recommended that at least one permanently installed assistive listening device complying with 4.33 be provided at each location or series. Where assistive listening devices are installed, signage should be provided identifying those stations which are so equipped.*

* * * * *

A10.4 Airports.

A10.4.1(8) Security Systems. This provision requires that, at a minimum, an accessible route or path of travel be provided but does not require security equipment or screening devices to be accessible. However, where barriers consist of movable equipment, it is recommended that they comply with the provisions of this section to provide passengers with disabilities the ability to travel with the same ease and convenience as the general public.

A11.0 Judicial, Legislative and Regulatory Facilities.

A11.1 All public use and common use areas are required to be accessible. In judicial, legislative and regulatory facilities, these include, but are not limited to, press rooms, conference rooms, and attorney lounges.

A11.2 Courtrooms, Hearing Rooms, and Chambers.

A11.2.1(2) Jury Boxes and Witness Stands. Figure 46 illustrates space requirements for two wheelchair seating spaces.

A11.2.1(4) Fixed Judges' Benches, Clerks' Stations, Speakers' Rostrums, and Raised Daises. Where courtrooms are assigned on a temporary basis, equipment should be on hand so that accessibility can be accomplished to at least one judge's bench and clerk's station within a few hours to accommodate court proceedings.

A11.2.1(5) Fixed Bailiffs' Stations, Court Reporters' Stations and Litigants' Stations. Providing appropriate maneuvering clearances such as knee clearance under tables should be considered when selecting furniture for accessible areas that will be utilized by the public such as the litigants' stations in a courtroom.

A11.3 Jury Assembly Areas and Jury Deliberation Areas.

A11.3.1(2) Fixed or Built-in Seating and Tables. Providing appropriate maneuvering space in the room and knee clearance under tables should be considered when selecting furniture for accessible areas that will be used by jurors.

A11.4 Courthouse Holding Facilities.

A11.4.3 Visiting Areas. Accessible cubicles or portions of counters may have fixed seats if the required clear floor space is provided within the area defined by the cubicle. Consideration should be given to the placement of grills, talk-thru baffles, intercoms, telephone handsets or other communication devices which should be usable from both the fixed seat and from the accessible seating area. If an assistive listening system is provided, the needs of the intended user and characteristics of the setting should be considered as described in A4.33.7 and Table A2.

A11.7 Two-Way Communication Systems. Two-way communication entry systems must provide both voice and visual display so that persons with hearing or speech impairments can utilize the system. This requirement may be met with a device that would allow security personnel to respond to a caller with a light indicating that assistance is on the way.

A11.8 Electrical Outlets, Wiring, and Conduit for Communication Systems. All courtrooms, hearing rooms (including

judges' chambers when used as hearing rooms), jury deliberation and jury orientation rooms, and meeting rooms designated for public use should be designed to take advantage of current and emerging technologies for providing information to persons with vision and hearing impairments. Since such persons may be litigants, jurors, witnesses, attorneys or courtroom personnel, it is important that the designated rooms be wired to support appropriate systems or that conduits or raceways be provided to facilitate future wiring as systems are added. For example, the use of so-called "smart" technology often includes bundled wiring harnesses which can be easily installed in new construction and can support a variety of current and future uses.

A11.9 Permanently Installed Assistive Listening Systems. In addition to the requirement for permanently installed assistive listening systems, section 11.8 (Electrical Outlets, Wiring, Conduit for Communication Systems) requires that all courtrooms, hearing rooms, jury deliberation and jury orientation rooms, and meeting rooms designated for public use in judicial, legislative or regulatory facilities have a duplex outlet and wiring, conduit or raceways to support communication equipment. This requirement is to facilitate the use of portable assistive listening systems.

A11.9(1) Judicial Facilities. Due to the large variation in the methods of assignment of courtrooms among jurisdictions, it is impossible to include an exhaustive list of each "type" of courtroom. "Type" is generally meant to include such distinct categories as civil courtroom(s), criminal courtroom(s), and family courtroom(s). For example, if a courthouse has 7 courtrooms and 3 are assigned to criminal matters, 2 are assigned to civil matters and 2 are assigned to family law matters, then section 11.9 would require that at least two criminal courtrooms, one civil courtroom and one family law courtroom have a permanently installed assistive listening system. In those facilities where courtrooms are not dedicated to a single type of proceeding, section 11.9 would require that 50 percent of all courtrooms provided have a permanently installed assistive listening system.

A11.9(2) Legislative and Regulatory Facilities. Permanently installed assistive listening systems are not required in conference rooms restricted to use by employees, consultants, and other invited guests or areas which are only occasionally or sporadically used for legislative or regulatory business such as a school board meeting held in a high school cafeteria. However, the Department of Justice's regulations implementing title II require public entities to take such steps as may be necessary to ensure effective communication with individuals with hearing impairments. See 28 CFR 35.160. Accordingly, a portable assistive listening system may be needed to provide communication access in the school board meeting held in the cafeteria.

A12.0 Detention and Correctional Facilities.

A12.1 General. All public and common use areas serving accessible cells or rooms are required to be accessible. In detention and correctional facilities, public areas would include visiting areas and other areas available to the general public. Common use areas include those areas serving a group of inmates or detainees, including, but not limited to, exercise yards and recreation areas, workshops and areas of instruction or vocational training, counseling centers, cafeterias, commissaries, and medical facilities. Detention and correctional facilities also contain areas that may be regarded as common use areas which specifically serve a limited number of housing cells or rooms. Where this occurs, only those common use areas serving accessible cells or rooms would need to be accessible as required by 12.5. For example, several housing cells may be located at and served by a dayroom or recreation room. In this instance, only those dayrooms serving accessible housing cells or rooms would need to be accessible.

A12.3 Visiting Areas. Accessible cubicles or portions of counters may have fixed seats if the required clear floor space is provided within the area defined by the cubicle. Consideration should be given to the placement of grills, talk-thru baffles, intercoms, telephone handsets or other communication devices which should be usable from both the fixed seat and from the accessible seating area. If an assistive listening system is provided, the needs of the intended user and characteristics of the setting should be considered as described in A4.33.7 and Table A2.

A12.4 Holding and Housing Cells or Rooms: Minimum Number.

A12.4.1 Holding Cells and General Housing Cells or Rooms. Many detention and correctional facilities are designed so that certain areas (e.g., "shift" areas) can be adapted to serve as different types of housing according to need. For example, a shift area serving as a medium security housing unit might be redesignated for a period of time as a high security housing unit to meet capacity needs. Consequently, it is recommended that consideration be given to the placement of some accessible cells or rooms in shift areas to allow for the greatest flexibility in housing persons with disabilities.

A13.0 Accessible Residential Housing.

A13.1 General. The requirements for transient lodging in section 9 differ from residential housing in this section. Residential housing includes, but is not limited to, single family homes, which may be a facility consisting of one dwelling unit, and multifamily dwelling facilities, which are those facilities consisting of more than one dwelling unit. A facility may consist of more than one building within a single site, such as garden apartments and townhouses. Examples of single family dwelling units include official residences, such as those provided for governors and state university presidents and single family housing provided as public housing. Multifamily dwelling units include public housing projects and apartments. Residential housing also includes dwelling units that are used to accommodate live-in employees such as faculty, visiting fellows, care-takers, rangers and curators. With respect to colleges and universities, student apartments containing dwelling units are considered residential housing.

A13.2 Minimum Number and Dispersion.

A13.2.2 New Construction: Dispersion. When dispersing accessible dwelling units throughout a facility, persons with disabilities must have the same choices regarding the type of unit as other members of the public. For instance, it would not be acceptable to offer only one bedroom accessible units when units with two and three bedrooms are also offered in the same facility. In addition, the availability of amenities such as view or the proximity to fitness facilities must also be comparable. For example, it is not acceptable to locate all accessible units on a side of a building overlooking an interior courtyard while inaccessible units are provided with exterior views.

A13.2.3 Alterations: Minimum Number and Dispersion. The following example illustrates the requirements of 13.2.3(1). An existing facility containing one hundred multifamily residential dwelling units is the subject of ten consecutive alterations over a period of ten years. Each year, ten units are altered. During the first five years, at least one unit of the ten altered units must comply with 13.3, 13.4 and 13.5 (five percent but not less than one) until the total number, five percent, required for the facility overall is achieved. Similarly, as part of the alterations during the first two years, one unit complying with sections 13.4 and 13.5 must be provided in addition to those which are accessible to people with mobility, hearing and vision impairments until the two percent minimum is achieved in units accessible to persons with hearing impairments and persons with visual impairments.

A13.3 Requirements for Accessible Dwelling Units.

A13.3.2 Minimum Requirements. An accessible second exit from dwelling units is recommended for emergency evacuation purposes.

A13.3.4(5) Sinks. Installing a sink with a drain at the rear so that plumbing is as close to the wall as possible can prevent garbage disposal units from obstructing the required clear knee space.

A13.3.4(6) Ranges and Cooktops. Although not required for minimum accessibility, countertop range units in a counter with adjustable heights can be an added convenience for wheelchair users.

A13.3.4(7) Ovens. Countertop or wall-mounted ovens with side-opening doors provide greater access. Clear space at least 30 in (760 mm) wide under counters at the side of ovens are an added convenience. The pull-out board or fixed shelf under side-opening oven doors provides a resting place for heavy items being moved from the oven to a counter.

A13.3.4(8) Refrigerator and Freezers. Side-by-side refrigerators and freezers provide the most usable freezer compartments. Locating refrigerators so that their doors can swing 180 degrees provides greater access by increasing maneuvering space so that knee and toe clearance is provided on the hinge side. Reaching items placed far back on the hinge side will be easier if the door arrangement permits the optimal maneuvering space.

A13.3.4(10) Kitchen Storage. Pantry type cabinets or tall cabinets can be provided rather than cabinets mounted over work counters. Additional storage space located conveniently adjacent to kitchens can be provided to make up for space lost when cabinets are not provided under sinks and work surfaces.

A14.0 Public Rights-of-Way.

A14.1 General. This section applies access provisions to pedestrian areas, elements, and facilities constrained by terrain, vehicular roadways, and existing buildings or elements of the pedestrian circulation network. Other areas or sites constructed or altered as part of a public improvement project such as plazas or courts where the constraints listed above do not apply are subject to the applicable provisions of ADAAG 4.1.1 through 4.35. (See appendix note A14.2.1).

A14.1.1 Definitions.

Public Improvement Project. Public improvement projects undertaken by or on behalf of a State or local government include, but are not limited to, work in the public right-of-way such as the construction or installation of site improvements and pedestrian amenities; the widening or realignment of a street, and the upgrading of a sewer, drainage system, or other utility. These projects are largely concerned with the infrastructure of a jurisdiction and are typically planned and budgeted in a multi-year capital improvements program or as an annual maintenance and repair line item. Projects may be undertaken within clearly defined boundaries or may consist of the installation of a typical item (e.g., drinking fountains, toilets, benches, curb ramps) dispersed throughout an area or jurisdiction.

Public entities which may later accept pedestrian circulation elements and networks constructed by private entities should ensure, through the permit process, that such elements and systems meet the requirements of this section.

Sidewalk. Unlike the definition of "walk", the definition of "sidewalk" does not include general pedestrian areas such as plazas and courts which can be designed, altered, and constructed to meet the requirements of 4.1 through 4.35. A court or plaza within the public right-of-way may be surrounded by sidewalks. While the sidewalk must conform to adjacent road slope and connect to existing sidewalks, which limits the ability to fully comply with 4.1 through 4.35, a newly-constructed court or plaza, like public sites generally, can be graded so that walks within it can either provide a slope less than 1:20 or meet the requirements for ramps in ADAAG 4.8.

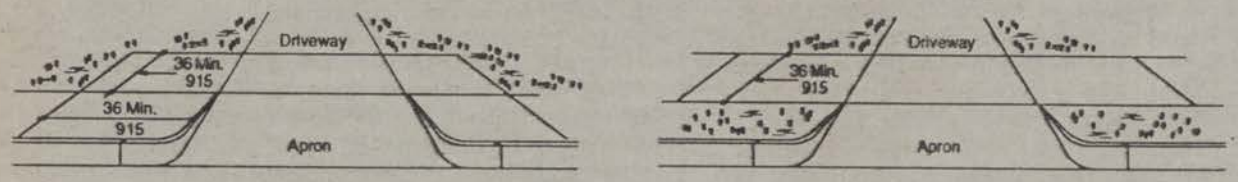
A14.2 Sidewalks.

A14.2.1 Minimum Requirements. Section 4.1.2(1) requires accessible elements on a site to be connected by an accessible route. Where the required accessible route is coincident with that of the sidewalk or continuous passage along it required by 14.2.1, the requirements of 4.3 prevail. The provisions of section 14 do not preclude sidewalk segments at different levels or sidewalks with stairs (which are sometimes advantageous in providing access to building entrances on or along steeply sloping sites) provided that a continuous passage within the sidewalk serves each accessible entrance and is connected to a continuous accessible sidewalk. Where a sidewalk contains steps or where sidewalk levels diverge, a railing, planter or other barrier separating the levels is recommended. Stairs abutting a sidewalk should have uniform riser heights and uniform tread widths.

A14.2.1(1) Slope. Cross slopes on portions of sidewalks adjacent to the continuous passage required by 14.2 may exceed 1:50 (2 percent) provided that the adjacent portions are smoothly blended. This may facilitate connecting the clear passage to building entrances, facilities or other pedestrian circulation elements.

A14.2.1(4) Separation. Narrow sidewalks immediately adjacent to the curb or roadway may be offset to avoid a non-conforming cross slope at driveway aprons by diverting the sidewalk around the apron. Sidewalks separated from the curb or roadway by a planted

A14.2 Sidewalks



(a)
Sidewalk without parkway where continuous passage by passes apron

(b)
Sidewalk with parkway

Fig. A9

Sidewalks at Driveway Aprons

parkway can accommodate an apron within the width of the parkway. (See Fig. A9).

A14.2.4 Protruding Objects. These provisions apply to the entire width of a sidewalk. Many objects on or along a sidewalk, such as newspaper vending machines, trash receptacles and construction barricades, are not fixed and thus are not subject to these guidelines but may nevertheless be covered under the Department of Justice rule regarding maintenance of accessible features. (See 28 CFR 35.133). Tree branches should also be trimmed periodically to comply with provisions for required head room.

A14.2.7 Marked Crossings. Marked crossings should be provided at the following areas: State and local government buildings and facilities, transportation facilities, places of public accommodation, at irregular intersections, and at mid block crossings.

A14.3 Drinking Fountains, Telephones, Toilet Facilities, Fixed Seating, Tables and Benches. Drinking fountains, telephones, toilet facilities and fixed seating, tables, and benches shall be reasonably dispersed within the project area. However, where one area of the project already has more existing accessible elements than another area, the new accessible elements should be dispersed within a portion of the project area where there are fewer or none, or at project boundaries with areas not served by existing accessible elements. Where there are no existing accessible elements, the distribution may be uniformly dispersed or dispersed in the same proportion as all units as required by the public improvement project.

A14.4 Vehicular Ways and Facilities.

A14.4.1(2) Location. Accessible on-street parking spaces located immediately adjacent to intersections may be served by sidewalk curb ramps, provided that the path of travel from the access aisle to the curb ramp is within the pedestrian crossing area. To the maximum extent feasible, accessible on-street parking should be located in level areas.

A14.4.2(3) Surface. The level surface at the call box must be connected to the roadway shoulder, sidewalk or pedestrian path. This does not require that paved shoulders or sidewalks be provided, but it does require that a person using a wheelchair be able to reach the level surface from the roadway shoulder. This would prohibit the level surface from being separated from the roadway by a ditch, gutter, curb, or other barrier.

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federal register

Monday
December 21, 1992

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 205
Rules and Procedures for Funds Transfers; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN Number—1510–AA19

Rules and Procedures for Funds Transfers

AGENCY: Treasury, Fiscal, Financial Management Service.

ACTION: Final Rule: Revision.

SUMMARY: On September 24, 1992, the Financial Management Service published in the **Federal Register** (57 FR 44272) a Final Rule (31 CFR part 205) implementing the interest accrual provisions of the Cash Management Improvement Act of 1990 for the transfer of funds between Federal agencies and States. The effective date of those provisions was amended by the Cash Management Improvement Act Amendments of 1992 (Pub. L. 102–589). This Final Rule only revises part 205 to reflect the amended compliance date provisions; it does not make any other changes to part 205. However, in order to facilitate the implementation of part 205 by States and affected Federal agencies, the complete text of part 205, as amended, is published by this final rule.

EFFECTIVE DATE: December 21, 1992.

ADDRESSES: Financial Management Service, CMIA Program Manager, Room 521C, 401 14th Street SW, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT:

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Randall S. Lewis, (Principal Attorney), (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 1992, the Financial Management Service issued a Final Rule to implement the Cash Management Improvement Act of 1990, Public Law 102–453, codified at 31 U.S.C. 3335 and 6503. 57 FR 44272. Subsequently, the Cash Management Improvement Act Amendments of 1992, Public Law. 102–589, amended the 1990 Act by changing the effective date of the interest accrual provisions of the 1990 Act, codified at subsections (c) and (d) of § 6503 of title 31, United States Code, from October 24, 1992 to July 1, 1993, or the first day of a State's 1994 fiscal year, whichever is later.

The final rule published on September 24, 1992, implemented the statutory requirement that then existed for the interest liability to begin to accrue as of October 24, 1992, by including a section, 31 CFR 205.5, that described the period from October 24, 1992, to the later of June 30, 1993, or the last day of a State's 1993 fiscal year as the Onset Period. During the Onset Period, special rules would have applied to minimize the disruption and inconvenience resulting from the commencement of interest accrual liability on October 24, 1992.

The enactment of the Cash Management Improvement Act Amendments of 1992 changed the effective date of the interest accrual provisions of the 1990 Act from October 24, 1992, to the later of July 1, 1993, or the first day of a State's 1994 fiscal year. The Onset Period section, 31 CFR 205.5, in the final rule has been removed, and references to the Onset Period section throughout the final rule have been removed to make the rule consistent with the amended statute.

Section 205.5 has been reserved due to the removal of the Onset Period from the final rule.

Regulatory Analysis

Because this rule merely conforms the effective date provisions of part 205 to a change in the law, it is a rule of agency management not subject to Executive Order 12291. Because no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other law, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply.

Notice and Comment

Because this rule merely conforms the effective date provisions of part 205 to the 1992 Act, notice and public procedure are not required pursuant to 5 U.S.C. 553 (a)(2) and (b)(B). For this reason, and because this rule merely grants an exemption by deferring the October 24, 1992, effective date of the existing regulations, a delayed effective date is not required pursuant to 5 U.S.C. 553(d) (1) and (3).

List of Subjects in 31 CFR Part 205

Electronic Fund Transfers, Grant Administration, Grant programs, Intergovernmental relations.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 205 is revised to read as follows.

PART 205—RULES AND PROCEDURES FOR FUNDS TRANSFERS

Sec.

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3335, 6501, 6503.

§ 205.1 Purpose.

Subparts A and B of this part implement the Cash Management Improvement Act and prescribe rules and procedures for the transfer of funds between the Federal Government and the States for Federal grant and other programs. Subpart C of this part is reserved and, if issued, may implement other authorities and govern transactions outside the scope of subparts A and B.

§ 205.2 Scope of part.

(a) Subparts A and B apply to programs listed in the Catalog of Federal Domestic Assistance, Pursuant to chapter 61 of title 31, United States Code.

(b) This Part does not generally apply to direct loan programs.

(c) This Part does not apply to payments made to States acting as vendors on Federal contracts, which are

subject to the Prompt Payment Act of 1982, as amended, 31 U.S.C. 3901 *et seq.*, Office of Management and Budget (OMB) Circular A–125 "Prompt Payment," and 48 CFR part 32.

(d) This Part does not apply to the Tennessee Valley Authority (TVA) or programs administered by the TVA.

§ 205.3 Definitions.

For the purpose of this part:

Administrative cost grant means a grant exclusively for administrative expenses under a program with separate grant awards for benefit payments and administrative expenses.

Auditable means the sources of data and information for a calculation are readily available, fully documented, and verifiable, such that the calculation can be replicated and proven to comply with all pertinent standards.

Authorized State official means a person with the authority under the laws of a State to make commitments on behalf of the State for the purposes of this regulation, or that person's official designee as certified in writing.

Check means a negotiable demand draft or warrant.

Clearance pattern means a frequency distribution showing the proportion of a total amount disbursed that is debited against the payor's bank account each day after the disbursement.

Current project cost means a cost for which the liability has been recorded on or after the day on which a State last requested funds for the project.

Day means a calendar day unless otherwise specified.

Disburse means to issue a check or initiate an electronic funds transfer payment.

Discretionary grant project means a project for which a Federal agency is statutorily authorized to exercise judgment in awarding a grant and in selecting a grantee, generally through a competitive process.

Drawdown means a process whereby a State requests and receives Federal funds.

Electronic funds transfer (EFT) means, in the context of Federal payments to States, the delivery of funds through wire transfer or the Automated Clearing House.

Equivalent rate means auction average equivalent yield, also known as the auction average investment rate of 13-week Treasury bills.

Federal agency means an executive agency as defined by section 102 of title 31, United States Code, exclusive of the TVA.

Federal-State agreement means an agreement between a State and a Federal program agency specifying terms and conditions for carrying out a program or group of programs, but does not mean a Treasury-State Agreement described in § 205.9.

Fiscal year means, unless otherwise indicated, a State's budget year ending in the specified calendar year.

Issue checks means to release or distribute checks to the payees.

Major Federal assistance program is defined in appendix A to subpart A of this part.

Obligational authority means the existence of a definite commitment on the part of the Federal Government to provide appropriated funds to a State to carry out specified programs, whether the commitment is executed before or after a State pays out funds for program purposes. This term means that an obligation to a State has been executed and does not refer to the amount of budgetary resources available.

Pay out means to debit the payor's bank account.

Pay out funds for program purposes means, in the context of State payments, to debit a State account for the purpose of making a payment to:

(1) A person or entity that is not considered part of the State pursuant to the definition of "State" in this section, or

(2) A State entity for the procurement of goods or services for the direct benefit or use of the payor State entity or the Federal Government.

Program means the range of activities encompassed under, and classified by, a Catalog of Federal Domestic Assistance number (CFDA #).

Refund means a recovery of funds previously paid out for program purposes.

Related banking costs means stand-alone, non-credit services which are considered necessary and/or customary for sustaining an account in a financial institution, whether in commercial financial institutions or State Treasurer accounts. Investment service fees are not related banking costs.

Request for funds means a solicitation for funds that is completed and submitted in accordance with Federal agency guidelines.

Secretary means the Secretary of the United States Department of the Treasury. The Financial Management Service (FMS) is the Secretary's representative in all matters concerning this Part, unless otherwise specified.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and an agency, instrumentality, or fiscal agent of a State so defined, but does not mean a local government or an Indian tribal government.

A State agency or instrumentality is any organization or component unit of the State reporting entity as defined by Generally Accepted Accounting Principles.

A fiscal agent of a State is an entity that pays, collects, or holds Federal funds on behalf of the State in furtherance of a Federal program, exclusive of a private nonprofit community organization.

Trust fund for which the Secretary is the trustee means a trust fund administered by the Secretary.

Subpart A—Negotiation of Intergovernmental Agreements for Financing Federal Assistance Programs—Interest Liabilities on Intergovernmental Funds Transfers

§ 205.4 Scope of subpart.

(a) *Initial programs.* From the later of July 1, 1993, or the first day of a State's 1994 fiscal year, to the end of a State's 1994 fiscal year, this Subpart applies, at a minimum, to the following programs, provided they meet the threshold for major Federal assistance programs in the State:

Alcohol and Drug Abuse and Mental Health Services Block Grant (CFDA 93.992);
Chapter 1 Programs—Local Educational Agencies (CFDA 84.010);
Child Support Enforcement (CFDA 93.023);
Family Support Payments to States (CFDA 93.020);
Foster Care—Title IV–E (CFDA 93.658);
Highway Planning and Construction (CFDA 20.205);
Job Opportunities and Basic Skills Training (CFDA 93.021)
Job Training Partnership Act (CFDA 17.250);
Low-Income Home Energy Assistance (CFDA 93.028);
Medical Assistance Program (CFDA 93.778);
National School Lunch Program (CFDA 10.555);
Nutrition Assistance for Puerto Rico (CFDA 10.566).
Pell Grant Program (CFDA 84.063);
Rehabilitation Services—Basic Support (CFDA 84.126);
Social Services Block Grant (CFDA 93.667);
Special Education—State Grants (CFDA 84.027);
Special Supplemental Food Program for Women, Infants, and Children (CFDA 10.557);
State Administration Matching Grants—Food Stamp Program (CFDA 10.561);

Supplemental Security Income (CFDA 93.807);
Unemployment Insurance (CFDA 17.225);

(b) *Threshold of materiality.* From the beginning of a State's 1995 fiscal year and thereafter, this Subpart applies, at a minimum, to all programs that meet the threshold for major Federal assistance programs in a State.

(c) *Determining major Federal assistance programs.* Unless otherwise specified in a Treasury-State Agreement, major Federal assistance programs will be determined from the most recent Single Audit data available from the U.S. Bureau of the Census and, if necessary, other data from the most recent fiscal year for which funding can be documented.

(d) *Covering additional programs.* A State and the FMS may agree, in a Treasury-State Agreement, to cover additional programs under this subpart. However, the FMS has unilateral authority to require a State and a Federal agency to cover additional programs under this subpart if a State or a Federal agency fails to comply with subpart B of this Part, as set forth in §§ 205.22 and 205.23.

(e) *Programs not covered by this subpart.* Programs in the Catalog of Federal Domestic Assistance that are not covered by this subpart are subject to subpart B of this Part.

(f) *Grace period for colleges and universities.* Unless otherwise specified in a Treasury-State Agreement, this subpart does not apply to a State institution of higher education prior to a State's 1995 fiscal year, notwithstanding any other provision of this section.

§ 205.5 [Reserved].

§ 205.6 Funding techniques.

(a) *Zero balance accounting.* Zero balance accounting is a method of transferring Federal funds to a State based on the actual amount of funds that are paid out by the State each day after a disbursement. Neither the Federal Government nor a State will incur an interest liability when this funding technique is properly applied.

(b) *Estimated clearance.* Estimated clearance is a method of transferring Federal funds to a State based on the estimated amount of funds that are paid out by the State each day after a disbursement. Neither the Federal Government nor a State will incur an interest liability when this funding technique is properly applied.

Example: A State mails $1 million in checks to benefit recipients under a Federally funded program. The State has developed the following clearance pattern for the program, based on when checks historically have been presented for payment:

Day	Percentage of dollars paid out
0 (checks mailed)	0
1	0
2	0
3	0
4	40
5	30
6	15
7	10
8	5

On Day 3, the State requests 40 percent of the funds disbursed, or $400,000, and the Federal agency deposits funds in the State account on Day 4 to coincide with the expected presentment of 40 percent of the total disbursement. On Day 4, the State requests 30 percent of the funds to pay for checks presented on Day 5, and so on. Furthermore, if the State draws down $400,000 to pay for checks presented on Day 4, neither the State nor the Federal Government will incur an interest liability if the amount of checks actually presented is more or less than $400,000. Over the long term, the amounts drawn down and the amounts of checks presented for payment will converge to the historical clearance pattern.

(c) *Pre-issuance funding.* Pre-issuance funding is a method of transferring Federal funds to a State prior to the day the State issues checks or initiates EFT payments. When this funding technique is applied, a State will incur an interest liability to the Federal Government from the day Federal funds are credited to a State account to the day the State pays out the funds for programs purposes.

Example: Three business days before a State issues $1 million in checks, it requests $1 million from a Federal agency, which deposits the funds in a State account the next day. The State has developed the following clearance pattern, based on when the State's checks historically have been presented for payment:

Day	Percent of dollars paid out
0 (funds deposited)	0
1	0
2 (checks issued)	0
3	0
4	0
5	40
6	30
7	15
8	10
9	5

The State will owe the Federal Government 5 days of interest on 40 percent of the funds, or $400,000, since that amount will be paid out for checks presented 5 days after Federal funds are deposited in a State account. The State will owe 6 days of interest on 30 percent of the funds, or $300,000, 7 days of interest on 15 percent of the funds, and so on.

(d) *Average clearance.* Average clearance is a method of transferring funds to a State based on the dollar-weighted average number of days required for funds to be paid out by the State after a disbursement. Neither the Federal Government nor a State will incur an interest liability when this funding technique is properly applied.

Example: A State mails $1 million in checks to contractors for a Federally funded program. The State has developed the following clearance pattern, based on when checks historically have been presented for payment, and has determined the average day of clearance, weighted by dollar amount, to be 5 days after checks are issued:

Day	Percent of dollars paid out	Factor (day x percentage)
0 (checks issued)	0	
1	0	
2	0	
3	0	
4	40	1.60
5	30	1.50
6	15	0.90
7	10	0.70
8	5	0.40
Average day of clearance		5.10

The State requests $1 million on day 4 and receives that amount on day 5, which is the dollar-weighted average number of days required for checks to be presented at the State's bank, and neither the State nor the Federal Government incurs an interest liability.

(1) In determining a dollar-weighted average day of clearance, fractions of days are rounded to the nearest whole number.

(2) The standards and maintenance requirements for clearance patterns, as set forth in § 205.8, apply for average day of clearance calculations.

(e) *Reimbursable funding.* Reimbursable funding is a method of transferring Federal funds to a State after the State has paid out its own funds for program purposes. After June 30, 1994, reimbursable funding is prohibited, except where mandated by Federal law.

§ 205.7 Requesting and transferring funds.

(a) *Electronic funds transfer.* To the maximum extent practicable, a Federal agency shall use EFT for transfers of funds to a State.

(b) *Minimizing the time between transfer and payment.* A State and a Federal agency shall minimize the time

elapsing between the transfer of funds from the United States Treasury and the pay out of funds for program purposes by a State, whether the transfer occurs before or after the pay out.

(c) *Procedures for funding techniques.* Unless otherwise specified in a Treasury-State Agreement, a State and a Federal agency shall adhere to the following procedures for each funding technique:

(1) *Zero balance accounting.* A State shall request funds the same day it pays out funds for program purposes, and a Federal agency shall deposit funds in a State account the same day it receives a request for funds.

(2) *Estimated clearance.* A State shall request funds 1 business day prior to the day it expects to pay out funds, in accordance with a clearance pattern, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(3) *Average clearance.* A State shall request funds 1 business day prior to the dollar-weighted average number of days required for funds to be paid out after a disbursement, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(4) *Pre-issuance funding.* A State shall request funds not more than 3 business days prior to the day on which it makes a disbursement, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(5) *Reimbursable funding.* A State shall request funds only after it has paid out its own funds for programs purposes, and a Federal agency shall deposit funds in a State account the next business day after receiving a request for funds.

(d) *Limiting the amount transferred.* Consistent with a funding technique and with funds transfer procedures in a Treasury-State Agreement, a State and a Federal agency shall limit the amount of funds transferred to a State to the minimum required to meet a State's actual, immediate cash needs.

(e) *Frequency of requests for funds.* A Federal agency shall allow a State to submit requests for funds, or bills, as often as daily. However, this requirement shall not be construed to change Federal agency guidelines defining a properly completed request for funds.

(f) *Prohibition of reimbursable funding requirements.* A Federal agency may not require a State to use reimbursable funding, unless mandated by Federal law.

§ 205.8 Clearance patterns.

(a) *Use and basis of development.* When required by a funding technique, a clearance pattern will be used to schedule the transfer of funds to a State and to support the calculation of interest. A State may:

(1) Develop a separate clearance pattern for an individual program; or

(2) Develop a composite clearance pattern for a logical group of programs that have the same disbursement method and that reasonably can be expected to have comparable clearance activity. A composite clearance pattern for a group of programs must be applied separately to each program in the group when scheduling funds transfers or calculating interest; or

(3) Develop a clearance pattern on another basis that is agreed upon by the FMS.

(b) *Standards for clearance patterns.* A State shall ensure that a clearance pattern accurately represents the flow of Federal funds and that a clearance pattern reflects seasonal or other periodic variations in clearance activity. A State shall ensure that a clearance pattern is auditable.

(c) *Maintaining clearance patterns.*

(1) If a State has actual or constructive knowledge, at any time, that a clearance pattern does not correspond to a program's clearance activity, or if a program undergoes operational changes that may affect clearance activity, the State shall:

(i) Immediately notify the FMS in writing of the program requiring a new clearance pattern, and

(ii) Develop a new clearance pattern and certify that it corresponds to a program's clearance activity.

(2) If a Federal agency has actual or constructive knowledge, at any time, that a State's clearance pattern does not correspond to a program's clearance activity, the agency shall notify the FMS in writing of the State and the program. The FMS shall immediately notify the State of the programs, and the State shall either:

(i) Develop a new clearance pattern and certify that it corresponds to a program's clearance activity, or

(ii) Re-certify the accuracy of the existing clearance pattern.

(d) *Certification for accuracy.* An authorized State official shall certify that a clearance pattern corresponds to a program's clearance activity. If a State develops a clearance pattern for a program or a group of programs, as set forth in paragraphs (a)(1) and (a)(2) of this section, an authorized State official shall re-certify the accuracy of the clearance pattern at least every 5 years. If a State develops a clearance pattern on another basis, as set forth in paragraph (a)(3) of this section, the FMS may prescribe requirements for re-certifying the accuracy of the clearance pattern.

§ 205.9 Treasury-State agreements.

(a) *Purpose.* A State may enter into a Treasury-State Agreement with the FMS to set forth terms and conditions for implementing this Subpart.

(b) *Components.* A Treasury-State Agreement pursuant to this Subpart must include, but will not be limited to, the following:

(1) *Programs.* Consistent with § 205.4, a Treasury-State Agreement must indicate the programs subject to this Subpart.

(2) *Funding techniques.* A Treasury-State Agreement must indicate the funding techniques to be applied to the programs subject to this Subpart, in accordance with the following:

(i) Zero Balance Accounting, Estimated Clearance, and Pre-Issuance Funding are techniques available for selection by a State, subject to the approval of the FMS.

(ii) A State may request approval to use the Average Clearance funding technique, but must provide the FMS with adequate justification for its use in lieu of Estimated Clearance.

(iii) Reimbursable funding is available for selection by a State, subject to the approval of the FMS, only for a program for which the State used reimbursable funding prior to the later of July 1, 1993, or the first day of a State's 1994 fiscal year. However, reimbursable funding is not available for selection by a State for the programs listed in § 205.4(a).

(iv) A State and the FMS may negotiate the use of other mutually agreed upon funds transfer procedures.

(v) A State may apply more than one funding technique or funds transfer procedure to a program with multiple cash flows.

(3) *Interest calculation method.* Consistent with § 205.13, a Treasury-State Agreement must indicate the method a State will use to calculate and document interest liabilities pursuant to this Subpart.

(4) *Clearance pattern method.* Consistent with § 205.8, a Treasury-State Agreement must indicate the method and standards a State will use to develop and maintain clearance patterns pursuant to this Subpart.

(5) *Direct costs.* Consistent with § 205.14, a Treasury-State Agreement must specify the types of direct costs a State expects to incur.

(6) *Reverse flow programs.* Consistent with §§ 205.8 and 205.13, with respect to programs for which the Federal

Government makes payments on behalf of a State, a Treasury-State Agreement must indicate the methods a Federal agency will use to calculate and document interest liabilities and to develop and maintain clearance patterns pursuant to this Subpart.

(c) *Consultation with Federal agencies.* The FMS will consult with Federal program agencies as necessary and appropriate when negotiating a Treasury-State Agreement.

(d) *Amendment.* A Treasury-State Agreement may be amended by the mutual written consent of the State and the FMS.

(e) *Five-year expiration.* A Treasury-State Agreement expires if it is not amended for 5 years.

(f) *Default provisions for a State without a Treasury-State Agreement.* With respect to a State that does not have a Treasury-State Agreement in effect after the later of June 30, 1993, or the last day of the State's 1993 fiscal year, the following apply:

(1) The FMS shall prescribe funds transfer procedures to be used by the State and the Federal agency in implementing this subpart, consistent with Federal and State law.

(2) The FMS shall prescribe the method for calculating interest liabilities pursuant to this subpart.

§ 205.10 Funding of indirect costs and administrative cost grants.

(a) A State and the FMS may agree, in a Treasury-State Agreement, to the following funding conventions for indirect costs and administrative cost grants:

(1) The State will draw down a prorated amount of an administrative cost grant on the date of the State payday. For example, the State would draw one-third of a quarterly administrative cost grant if payroll is monthly, or one-sixth of a quarterly administrative cost grant if payroll is semi-monthly.

(2) If an indirect cost rate is applied to a program, the State will include a proportionate share of the indirect cost allowance in each drawdown by applying the indirect cost rate to the appropriate direct costs of each drawdown.

(3) If costs must be allocated to various programs pursuant to a labor distribution or other system under an approved cost allocation plan, the State will draw down funds to meet cash outlay requirements based on the most recent, certified cost allocations, with subsequent adjustments pursuant to the actual allocation of costs.

(b) A State and the FMS may agree, in a Treasury-State Agreement, that no interest liabilities will be incurred or calculated for indirect costs and administrative cost grants, notwithstanding any other provision of this subpart.

§ 205.11 Federal interest liabilities.

(a) *General.* The Federal Government will incur an interest liability to a State if the State pays out its own funds for program purposes with valid obligational authority under Federal law, Federal regulation, or Federal-State agreement. A Federal interest liability will accrue from the day a State pays out its own funds for program purposes to the day Federal funds are credited to a State account.

(b) *Late appropriations.* If a State pays out its own funds for program purposes due to delay in passage of a Federal appropriations act, the Federal Government will incur an interest liability if an appropriations act, as enacted, covers the period of the State's expenditure and permits payment for expenses already incurred by the State.

(c) *Lack of obligational authority other than occurring through late appropriations.* If a State pays out its own funds for program purposes without obligational authority, the Federal Government will incur an interest liability if the lack of obligational authority is not the result of limitation, reduction, or termination of the program and where obligational authority is subsequently established to permit payment for the State's expenditure.

(d) *Federal Highway Trust Fund.* The following applies to programs and projects funded out of the Federal Highway Trust Fund, notwithstanding any other provision of this section:

(1) If a State does not request funds at least weekly for current project costs, a Federal interest liability will not accrue prior to the day a State submits a request for funds.

(2) If a State pays out its own funds in the absence of a project agreement or in excess of the Federal obligation in a project agreement, the Federal Government will not incur an interest liability.

(e) *Discretionary grant project approval.* If a State pays out its own funds prior to the earlier of:

(1) The day a Federal agency officially notifies the State in writing that a discretionary grant project has been approved, or

(2) The date that a Federal agency is otherwise obligated in law to pay the discretionary grant project to the State, the Federal Government will not incur an interest liability, notwithstanding any other provision of this section.

(f) *Authorizations and appropriations for future years.* If a State pays out its own funds prior to the availability of Federal funds that have been authorized or appropriated for a future Federal fiscal year, the Federal Government will not incur an interest liability, notwithstanding any other provision of this section.

(g) *Reverse flow programs.* With respect to programs for which the Federal Government makes payments on behalf of a State, such as Supplemental Security Income, the Federal Government will incur an interest liability if State funds are in a Federal Government account prior to the day a Federal agency pays out funds for program purposes. A Federal interest liability will accrue from the day State funds are credited to the Federal Government's account to the day the Federal agency pays out the State funds for program purposes.

§ 205.12 State interest liabilities.

(a) *General.* A State will incur an interest liability to the Federal Government if Federal funds are in a State account prior to the day the State pays out funds for program purposes. A State interest liability will accrue from the day Federal funds are credited to a State account to the day the State pays out the Federal funds for program purposes.

(b) *Refunds.* A State will incur an interest liability to the Federal Government on a refund transaction of Federal funds. A State interest liability will accrue from the day the refund is credited to a State account to the day the refund is either paid out for program purposes or credited to a Federal Government account. However, a State may adopt a transaction threshold not exceeding $10,000, below which the State will not incur an interest liability on a refund transaction.

(c) *Reverse flow programs.* With respect to programs for which the Federal Government makes payments on behalf of a State, such as Supplemental Security Income, a State will incur an interest liability to the Federal Government if a Federal agency pays out Federal funds for program purposes on behalf of the State. A State interest liability will accrue from the day the Federal agency pays out Federal funds for program purposes to the day State funds are credited to the Federal Government's account.

(d) *Exception.* Notwithstanding any other provision in this section, a State will not incur an interest liability to the Federal Government if Federal law requires that the interest a State earns on Federal funds must be retained by

the State or used for program purposes. This exception shall not be construed to exempt a program from any other provision of this Subpart.

§ 205.13 Interest calculation.

(a) *State responsibilities.* A State shall calculate Federal interest liabilities and State interest liabilities for each program subject to this subpart, except as provided for in paragraph (b) of this section.

(b) *Reverse flow programs.* A Federal agency shall calculate Federal interest liabilities and State interest liabilities for a program subject to this subpart for which the Federal agency makes payments on behalf of a State, such as Supplemental Security Income.

(c) *Start date.* Interest liabilities begin accruing the later of July 1, 1993, or the first day of a State's 1994 fiscal year.

(d) *Interest rate.* The interest rate for all interest liabilities pursuant to this Subpart is the annualized rate equal to the average equivalent yields of 13-week Treasury Bills auctioned during a State's fiscal year, except as provided for in paragraph (i) of this section. The FMS will provide this rate to each State.

(e) *Interest calculation method and standards.* A State shall calculate and report interest liabilities on the basis of its fiscal year. A State shall ensure that its interest calculations are auditable. As set forth in § 205.9, a Treasury-State Agreement must include the method a State will use to calculate and document interest liabilities pursuant to this Subpart.

(f) *Statistical sampling.* If a State uses statistical sampling to calculate interest, the State must randomly sample transactions for each program subject to this Subpart to ensure, at a minimum, a 95 percent confidence interval subject to a .3 dollar-weighted day bound of error estimate.

(g) *Transactions prior to a State's 1994 fiscal year.* A State shall not include in an interest calculation a transaction in which either the transfer of funds to the State or the pay out of funds for program purposes by the State occurs prior to the later of July 1, 1993, or the first day of the State's 1994 fiscal year.

(h) *Funds withdrawn from a State account in the Unemployment Trust Fund (UTF).* A State shall account for the actual interest earnings and the related banking costs attributable to funds withdrawn from the State's account in the UTF.

(1) If funds withdrawn from the several accounts in the UTF are commingled in the State's Unemployment Insurance benefit payment account, the funds withdrawn from the State's account must be allocated a pro rata share of the actual interest earnings and related banking costs of the benefit payment account. Funds withdrawn from the State's account in the UTF that are included in investment pools must be allocated a pro rata share of interest earnings of the investment pool.

(2) Notwithstanding any other provision of this subpart, a State's interest liability on funds withdrawn from its account in the UTF consists of the actual interest earnings less the related banking costs of such funds, and shall be deposited in the State's account in the UTF.

(3) This paragraph (h) does not apply to funds withdrawn from the Federal Employees Compensation Account and the Extended Unemployment Compensation Account in the UTF.

§ 205.14 Direct costs of implementation.

(a) *Definition.* Direct costs of implementing this Subpart are those costs necessary for the development and maintenance of clearance patterns and those costs necessary to perform the actual calculation of interest liabilities. Direct costs do not include expenses incurred for upgrading or modernizing of accounting systems.

(b) *Reimbursement of direct costs.* A State will be compensated annually for the direct costs of implementing this Subpart, subject to the following conditions and limitations.

(1) *Treasury-State Agreement.* A State must have a Treasury-State Agreement with the FMS, as set forth in § 205.9.

(2) *Direct cost claim.* A State must submit a claim for direct costs with its Annual Report, as set forth in § 205.15(c).

(3) *Documentation.* A State must maintain documentation to substantiate its claim for direct costs.

(4) *Eligibility of costs.* Direct costs in excess of $50,000 in any year are not eligible for reimbursement, unless a State can justify to the FMS that it would be unable to develop clearance patterns or perform the actual calculation of interest without incurring such costs.

(5) *Costs incurred in prior years.* Direct costs incurred prior to a State's most recently completed fiscal year are not eligible for reimbursement, excepting costs incurred prior to the first day of a State's 1994 fiscal year and claimed for reimbursement with the State's first Annual Report submitted pursuant to this Subpart.

(6) *Costs incurred prior to July 22, 1991.* Direct costs incurred prior to July 22, 1991, are not eligible for reimbursement, unless a State makes separate application for such costs, with adequate justification and documentation.

(7) *Review by the FMS.* The FMS will review all direct cost claims for reasonableness. Unreasonable cost claims, as determined by the FMS, will not be reimbursed, notwithstanding any other provision of this section.

(8) *Method of reimbursement.* The FMS will effect direct cost reimbursement by reducing the State interest liability and adjusting the Federal interest liability for each State, to the extent allowed by the following limitations:

(i) Interest liabilities for programs funded out of trust funds for which the Secretary is trustee may not be reduced or adjusted; and

(ii) The aggregate Federal interest liability for all States may not increase.

(c) *Application of cost principles.* A State shall not include direct costs of implementing this Subpart, as defined in paragraph (a) of this section, in the development of its Statewide cost allocation plan, as provided for in OMB Circular A–87. All other costs incurred by a State to implement this Subpart are subject to the procedures and principles of OMB Circular A–87.

(d) *Sunset review.* By July 1, 1996, the FMS will review the policies in this section to determine their effectiveness.

§ 205.15 Annual reports.

(a) A State shall submit an Annual Report to the FMS by December 31 accounting for the interest liabilities of the State's most recently completed fiscal year. The format of the Annual Report will be prescribed by the FMS and will include, at a minimum, the following:

(1) the Federal interest liability for each program subject to this subpart;

(2) the State interest liability for each program subject to this subpart, with the State interest liability on refunds for each program reported separately;

(3) the total Federal interest liability for all programs subject to this subpart;

(4) the total State interest liability for all programs subject to this subpart;

(5) the net total interest owed by the State or the Federal Government;

(6) for information purposes, not for the calculation of interest, the actual interest earnings on and the related banking costs for funds drawn from the State's account in the UTF.

(b) A State shall submit its Annual Report both in hard copy and either on computer diskette or by other electronic means prescribed by the FMS.

(c) A State may submit as part of its Annual Report a claim for reimbursement of the direct costs of

implementing this Subpart, in accordance with § 205.14. An authorized State official shall certify the accuracy of a State's direct cost claim.

(d) An authorized State official shall certify the accuracy of a State's Annual Report.

(e) *Reverse flow programs.* With respect to a program for which the Federal Government makes payments on behalf of a State, a Federal agency shall provide an interest report to a State by December 1 for the State's most recently completed fiscal year. The interest report will include the State interest liability and the Federal interest liability for the program, including the Federal interest liability on refund transactions of $10,000 or more. The Federal agency shall certify the accuracy of the interest report. A State shall incorporate the interest report in its Annual Report.

(f) The FMS will distribute Annual Reports to Federal agencies.

§ 205.16 Interest payment.

(a) *Adjusted interest liabilities.* The FMS will adjust a State's total interest liability and the Federal Government's total interest liability to a State to effect direct cost reimbursement, as set forth in § 205.14(b)(8).

(b) *Net interest payment.* The adjusted total State interest liability and the adjusted total Federal interest liability for each State will be offset to determine the net interest payable to or from a State. The payment of net interest to or from a State for its most recently completed fiscal year will occur no later than March 1.

(c) *Disputed amounts.* If the amount of interest payable is disputed according to the provisions of § 205.18, payment must occur for any undisputed portions. The interest in dispute must be paid within 14 days of receipt of the decision by the Assistant Commissioner, Federal Finance, as set forth in § 205.18.

§ 205.17 Compliance and oversight.

(a) *State coordinator.* A State shall designate an official representative with the statutory or administrative authority to coordinate all interaction with the Federal Government concerning this Subpart, and shall notify the FMS of the representative's name and title in writing.

(b) *Federal agency coordinator.* A Federal Agency shall designate an official representative to coordinate all interaction with the FMS and the States concerning this Subpart, and shall notify the FMS of the representative's name and title in writing.

(c) *Recordkeeping.* A State shall maintain records supporting interest calculations, clearance patterns, direct costs, and other functions directly pertinent to the implementation and administration of this Subpart.

(d) *Record retention.* A State shall retain the records related to implementation of this Subpart of each fiscal year for 3 years from the date the State submits its Annual Report, or until any dispute or action involving the records and documents is completed, whichever is later.

(e) *Availability of records.* The FMS, the Comptroller General, and a Federal agency shall have the right of access to all records for the purpose of verifying interest calculations, clearance patterns, direct cost claims, and the State's accounting for Federal funds.

(f) *Records for reverse flow programs.* With respect to programs for which the Federal Government makes payment on behalf of a State, a Federal agency shall maintain records supporting interest calculations and clearance patterns. A Federal agency shall retain such records for 3 years from the date the Federal agency submits its interest calculations to a State, as set forth in § 205.15(e), or until any dispute or action involving the records is completed, whichever is later. The FMS, the Comptroller General, and a State shall have the right of access to all records for the purpose of verifying interest calculations, clearance patterns, and the Federal agency's accounting for State funds.

(g) *State audits.* A State's implementation of this Subpart is subject to audit in accordance with chapter 75 of title 31, United States Code, "Requirements for Single Audits."

(h) *Federal agency compliance reviews.* A Federal agency's implementation of this Subpart is subject to review pursuant to procedural instructions issued by the FMS.

(i) *Reviewing Annual Reports.* The FMS will distribute Annual Reports to Federal agencies, as set forth in § 205.15(f). Upon request by the FMS, a Federal agency shall review a State's Annual Report for accuracy and reasonableness and shall report its findings to the FMS.

(j) *Federal agency noncompliance.* If a Federal agency egregiously or repeatedly causes Federal interest liabilities or fails to comply with this Subpart, the FMS may collect a charge from the Federal agency in an amount the FMS determines to be the cost to the general fund of the Treasury caused by such noncompliance, in accordance with the following:

(1) The FMS will issue a Notice of Assessment to the Federal agency, indicating the nature of the noncompliance, the amount of the charge, the manner in which it was calculated, and the right to file an appeal.

(2) A charge for noncompliance, to the maximum extent practicable, will be paid out of appropriations available for the Federal agency's operations and will not be paid from amounts available for funding the programs of the Federal agency.

(3) If a Federal agency does not pay a charge for noncompliance within 45 days after receiving a Notice of Assessment, the FMS will debit the appropriate Federal agency account.

(4) A Federal interest liability resulting from circumstances beyond the control of a Federal agency does not constitute noncompliance.

(k) *State noncompliance.* If a State materially fails to comply with this Subpart, the FMS may take one or more of the following actions, as appropriate in the circumstances:

(1) Request a Federal agency or the General Accounting Office to conduct an audit of the State to determine interest owed to the Federal Government, and implement procedures to recover such interest; or

(2) Deny the reimbursement of all or a part of the State's direct cost claim; or

(3) Take other remedies legally available.

(l) *Failure to request funds.* If a State repeatedly or deliberately fails to request funds in accordance with the procedures established for its funding techniques, as set forth in § 205.7 or in a Treasury-State Agreement, the FMS may deny the State payment or credit for any resultant Federal interest liability, notwithstanding any other provision of this part.

§ 205.18 Appeals and dispute resolution.

(a) *Appeal by a Federal agency.* A Federal agency may appeal any charge assessed by the FMS for noncompliance by submitting an appeal in writing to the Assistant Commissioner, Federal Finance (hereinafter Assistant Commissioner), of the FMS, within 45 days of the date of the Notice of Assessment. The appeal shall include a concise factual statement of the conditions leading to the Notice of Assessment, the basis of the appeal, and the action requested by the agency. In the event of an appeal, the charge imposed under the Notice of Assessment will be deferred pending the results of the appeal.

(1) *Appeal review process.* The Assistant Commissioner will review the Notice of Assessment, any documentation supporting the Notice, and the written appeal from the agency.

If based on this review, the Assistant Commissioner finds that additional information is required, the Assistant Commissioner may request to meet with the agency, as well as other parties selected by the Assistant Commissioner, as part of the review process.

(2) *Decision.* The Assistant Commissioner will issue a written decision within 30 days of receipt of the appeal. The Assistant Commissioner may unilaterally extend this period for an additional 30 days if required. The decision of the Assistant Commissioner whether to uphold the Notice of Assessment, to overturn the Notice, or to mandate some other action will be stated in the written decision. Other actions mandated may include a reduced charge, a deferral of the charge, an alternate solution to cash management improvement, or any combination thereof. The basis of the decision, the amount of the charge and the effective date of the charge will be stated in the written decision. The effective date of the charge may be retroactive to the date indicated in the Notice of Assessment.

(b) *Resolution of disputes.* If a dispute arises from the implementation or administration of this Subpart, the following resolution mechanism is available:

(1) The aggrieved party may submit a written appeal to the Assistant Commissioner. The aggrieved party shall concurrently serve a copy of the written appeal to the other concerned parties.

(2) Within 20 days of the submission of the written appeal, the aggrieved party shall submit to the Assistant Commissioner a written statement not exceeding 15 pages, with supporting documentation in appendices, that articulates the dispute, the aggrieved party's position, and the relief sought. The aggrieved party shall concurrently serve its statement upon the other concerned parties.

(3) Within 30 days of receipt of the aggrieved party's statement, the responding party may submit a response statement not exceeding 15 pages, with supporting documentation in appendices, to the Assistant Commissioner. The responding party shall concurrently serve its response statement to the other concerned parties.

(4) The Assistant Commissioner will issue a written decision within 30 days after the period for the submission of the response statement. The Assistant Commissioner may unilaterally extend the deadline for issuing a decision by 30 days if required. The Assistant Commissioner's decision shall be the final agency action on the part of the FMS for the purposes of judicial review procedures under the Administrative Procedures Act, 5 U.S.C. 701–706, unless either party invokes the provisions of the Administrative Dispute Resolution Act of 1990, 5 U.S.C. 581–593 (ADRA), in accordance with the following.

(i) Either party may seek to invoke the assistance of a neutral party appointed under the provisions of the ADRA within 30 days of receipt of the Assistant Commissioner written decision. The party invoking the ADRA shall notify both the Assistant Commissioner and the responding party in writing. With the written mutual consent of the parties and the Assistant Commissioner, a neutral party appointed under the provisions of the ADRA may assist in resolving the dispute through the use of alternate means of dispute resolution as defined in the ADRA.

(ii) If the party invoking the ADRA is unable to reach a satisfactory resolution of the problem using the ADRA, the Assistant Commissioner's decision shall be the final agency action on the part of the FMS for purposes of the judicial review procedures under the Administrative Procedure Act, 5 U.S.C. 701–706.

Appendix A to Subpart A of Part 205—Definition of Major Federal Assistance Program

"Major Federal Assistance Program," for State governments having Federal assistance expenditures between $100,000 and $100,000,000 means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures. Where total expenditures during the applicable year exceed $100,000,000, the following criteria apply:

Total expenditure of Federal financial assistance for all programs		Major Federal Assistance Program means any program that exceeds (million)
More than	But less than (billion)	
$100 million	$1	$3
1 billion	2	4
2 billion	3	7
3 billion	4	10
4 billion	5	13
5 billion	6	16
6 billion	7	19
Over 7 billion		20

Subpart B—Potential Liabilities on Intergovernmental Funds Transfers Included in the Catalog of Federal Domestic Assistance but Otherwise Generally Excluded From Subpart A

§ 205.19 Scope of subpart.

This subpart applies to programs in the Catalog of Federal Domestic Assistance that are not subject to subpart A.

§ 205.20 Cash advances.

(a) Cash advances to a State shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the State in carrying out a program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual cash outlay by the State for direct program costs and the proportionate share of any allowable indirect costs.

(b) Neither a State nor the Federal Government will incur an interest liability on the transfer of funds for a program subject to this Subpart.

§ 205.21 Federal agency oversight responsibilities.

(a) A Federal agency shall review the practices of States as necessary to ensure compliance with this Subpart. A Federal agency shall notify the FMS if a State demonstrates an unwillingness or inability to comply with this Subpart.

(b) A Federal agency shall formulate procedural instructions specifying the methods for carrying out the responsibilities of this section.

§ 205.22 State noncompliance.

If a State demonstrates an unwillingness or inability to comply with this Subpart, the FMS may require the State and a Federal agency to cover additional programs under subpart A of this part, notwithstanding any other provision of this part.

§ 205.23 Failure to make funds available.

Consistent with program purposes and regulations, if a Federal agency demonstrates an unwillingness or inability to make Federal funds available to a State as needed to carry out a program, the FMS may require the State and the Federal agency to cover additional programs under subpart A of this part, notwithstanding any other provision of this part.

Subpart C—[Reserved]

Dated: November 19, 1992.

Russell D. Morris,

Commissioner.

[FR Doc. 92–30757 Filed 12–18–92; 8:45 am]

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federal register

Monday
December 21, 1992

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact; Standing Rock Sioux Tribe, North Dakota; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact; Standing Rock Sioux Tribe, North Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Control of Class III Games of Chance for the Standing Rock Sioux Tribe and the State of North Dakota, which was enacted on August 31, 1992.

DATES: This action is effective December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–0994.

Dated: December 8, 1992.

Ron Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–30833 Filed 12–18–92; 8:45 am]

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Federal Register

Monday
December 21, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact; Standing Rock Sioux Tribe, South Dakota; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact; Standing Rock Sioux Tribe, South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Gaming Compact Between the Standing Rock Sioux Tribe and the State of South Dakota, which was enacted on August 6, 1992.

DATES: This action is effective December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–0994.

Dated: December 8, 1992

Ron Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92-30834 Filed 12–18–92; 8:45 am]

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federal register

Monday
December 21, 1992

Part VII

Department of Labor

Mine Safety and Health Administration

30 CFR Part 100
Criteria and Procedures for Proposed Assessment of Civil Penalties; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219–AA44

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule revises the Mine Safety and Health Administration's (MSHA) procedures in 30 CFR part 100 for proposing civil penalties under the Federal Mine Safety and Health Act of 1977 (Mine Act). The rule is responsive to a November 21, 1989, Order of the United States Court of Appeals for the District of Columbia Circuit. The rule applies a regular assessment, rather than a single penalty, to a timely abated non-significant and -substantial (non-S&S) violation at a mine with an excessive history of violations. This change will induce greater overall mine operator compliance with MSHA's safety and health standards, thereby improving miner safety and health.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The rule contains no information collection requirements subject to the Paperwork Reduction Act of 1980.

II. Rulemaking History

MSHA initially had two types of assessments: regular assessments and special assessments. The computer-generated regular assessments used, and continue to use, a formula system, based on the criteria in the Mine Act for the assessment of penalties, to compute penalty points which are then converted to a dollar amount. These criteria include mine and company size, history of violations, negligence, gravity of the hazard, and good faith on the part of the operator in abating the hazard within the time set by the inspector. The individually prepared special assessments were, and continue to be, for violations of such a nature or seriousness that an appropriate penalty cannot be determined under the regular assessment formula.

On May 21, 1982, MSHA revised its penalty regulations to include a $20 single penalty assessment for timely abated non-S&S violations (47 FR 22286). Non-S&S violations are violations that are not reasonably likely to result in a reasonably serious injury or illness. The regular formula system continued to address significant and substantial (S&S) violations, which are those that are reasonably likely to result in a reasonably serious injury or illness. Special assessments continued to deal with many of the most serious violations. For regular assessment purposes, history of violations was defined as the average number of violations per inspection day (VPID) for mine operators and as the average number of violations assessed per year at all mines for independent contractors; i.e., contractor violation history points (CVHP). Timely paid single penalty violations were not included in the history computation.

On February 17, 1988, the Coal Employment Project and the United Mine Workers of America (UMWA) challenged the Secretary of Labor's authority to assess a $20 single penalty for timely abated non-S&S violations. On November 21, 1989, the United States Court of Appeals for the District of Columbia Circuit upheld MSHA's authority to assess the $20 single penalty, *Coal Employment Project et al.* v. *Dole,* 889 F.2d 1127, but ordered MSHA to revise its civil penalty regulations to: (1) Take a mine operator's history of violations specifically into account in determining whether a non-S&S violation qualifies for a single penalty assessment; and (2) include single penalty violations in the history of violations computation for regular assessments. The Court further ordered MSHA to take immediate interim steps to correct these defects in the assessment system and remanded the record to MSHA to revise part 100 to comply with the Court's order. The Court retained jurisdiction of the case.

In response to the remand, MSHA published an interim action on December 29, 1989 (54 FR 53609), that temporarily suspended the sentence in 30 CFR 100.3(c) by which timely paid single penalty violations were excluded from an operator's history of violations for regular assessment purposes. Thus, in calculating penalties proposed for S&S violations, MSHA now includes all final violations, both S&S and non-S&S, in an operator's history. At the same time, the Agency also revised its assessment policies by instructing MSHA enforcement personnel to review non-S&S violations involving high negligence and an excessive history of the same type of violation for possible special assessment. While these interim provisions were in effect, the Agency would begin rulemaking to develop a final rule, thereby complying with the Court's order.

On March 12, 1990, the Coal Employment Project, *et al.,* filed a motion to enforce compliance with the order of remand with the Court, stating that MSHA's interim actions were an inappropriate response to the Court order.

On April 12, 1990, the Court found the "high negligence" requirement in MSHA's new assessment policy for non-S&S violations to be inconsistent with the November 21, 1989, order. Accordingly, the Court gave MSHA 45 days to respond to the Court's expressed concerns and, on May 29, 1990, MSHA issued a program policy letter implementing a program of increased penalties for both S&S and non-S&S violations at a mine with an "excessive history" of violations.

On December 28, 1990, MSHA published a proposed revision to its civil penalty regulations (55 FR 53482) that included: (1) an across-the-board increase in all of the Agency's penalties; and (2) increased penalty assessments when a mine has an excessive history of violations. The excessive history proposal was based on the May 1990 program policy letter. The comment period on the proposal was initially scheduled to close on March 1, 1991, but it was extended to March 18, 1991 (56 FR 8171), and then to April 2, 1991 (56 FR 11130), at which time it closed. MSHA received comments from all sectors of the mining industry. Subsequently, based on these comments, MSHA separated the rulemaking into a final rule and a reproposal.

The final rule published on January 24, 1992 (57 FR 2968), revised the penalty table in accordance with the Omnibus Budget Reconciliation Act of 1990 and increased the single penalty from $20 to $50. It also made permanent the interim action of December 29, 1989, that included single penalty violations in an operator's history of violations for regular penalty assessments.

As a result of comments received, MSHA issued a reproposal of the excessive history program on January 24, 1992 (57 FR 2972). These comments and MSHA's experience had persuaded the Agency that the excessive history program criteria should be substantively revised. Consequently, in order to obtain public comment on the proposed new criteria, MSHA reproposed an excessive history program containing these substantively revised criteria.

On January 24, 1992, simultaneously with the final rule and reproposal, MSHA issued a new program policy

letter to replace the May 1990 policy letter. This new program policy letter implemented the revised excessive history criteria contained in the January 1992 reproposal.

The comment period for the January 1992 reproposal, initially scheduled to close on March 24, 1992, was extended to April 24, 1992 (57 FR 9518). Once again, MSHA received comments from all sectors of the mining industry.

III. Discussion and Summary of the Final Rule

A. General Discussion

With this final rule, MSHA accomplishes two basic objectives: (1) It encourages mine operators who have an excessive history of violations to improve compliance; and (2) it responds to the Court of Appeals order by evaluating an operator's history of violations in determining whether a timely abated non-S&S violation is eligible for a single penalty assessment.

MSHA received numerous and extensive comments on both of its excessive history proposals. All of these comments were carefully reviewed and evaluated and the significant issues raised are discussed in this preamble.

In addition, commenters raised several other assessment-related issues such as: A general revision of part 100; a revision of enforcement policies as they pertain to assessments; a definition of inspection day; and some issues that were outside the specific scope of the proposed excessive history program. The scope of this final rule, however, is specifically limited to only those issues related to the excessive history program addressed in the proposals.

B. Section-By-Section Analysis of the Rule

The following section-by-section analysis addresses the public comments on the proposals and describes the resulting final rule.

Section 100.3 Determination of Penalty Amount; Regular Assessment

In this section, MSHA revises paragraph (c) to insert the word "Overall" as the first word in this paragraph. This will clarify the distinction between overall history and excessive history.

Section 100.4 Determination of Penalty Amount, Single Penalty Assessment

In this section, MSHA establishes an excessive history assessment program in which a timely abated non-S&S violation cited at a mine with an excessive history of violations will not be eligible for a single penalty assessment but will, instead, receive a regular penalty assessment. This increased assessment will more effectively deter violations and should help to reduce the number of both S&S and non-S&S violations at those mines, thereby providing a safer and more healthful work environment.

Consistent with the Court of Appeals order, the final rule establishes an excessive history assessment program for only non-S&S violations. The excessive history criteria and penalty assessment increases are specifically included in the final rule. This excessive history program is based upon § 100.3(c), overall history of violations for a preceding 24-month period as determined by VPID or CVHP. In addition, a mine must have more than 10 violations in a preceding 24-month period in order to receive any excessive history assessment. Upon payment or final adjudication, citations and orders are counted in history and, therefore, included in determining excessive history. Only citations and orders issued on or after January 1, 1991, are used in determining excessive history. The Agency will use the available history data starting on January 1, 1991, when determining excessive history until the full 24 months of history are available on January 1, 1993. Thereafter, the calculation of excessive history will be based on a preceding 24-month period.

In establishing this excessive history program, MSHA has complied with the Court of Appeals order, evaluated its experience gained under the May 1990 and the January 1992 program policy letters, examined the most recent violation and enforcement data, and responded to the public comments submitted on the December 1990 proposal and the January 1992 reproposal.

Since the issuance of the initial Court order in November 1989, the Agency has reviewed a number of options for an excessive history program and the appropriate criteria. In every option reviewed, however, the one constant requirement was the incorporation of history of violations in determining whether a timely abated non-S&S violation would be eligible for a single penalty assessment.

One commenter to the December 1990 proposal recommended the abolition of the single penalty in favor of a regular penalty assessment for all non-S&S violations. Another commenter to the December 1990 proposal recommended a minimum $500 penalty for all non-S&S violations, while a few commenters suggested that the increase in the single penalty from $20 under the old penalty table to $50 under the new penalty table was a sufficient penalty increase for all non-S&S violations and that an additional assessment was unnecessary.

The single penalty assessment for timely abated non-S&S violations was established in 1982 to permit the mining community and MSHA to focus their resources on S&S violations that have the greatest impact on miner safety and health. As noted in the preamble to the January 1992 reproposal (57 FR 2976), the single penalty assessment continues to serve an important safety and health purpose by reducing the amount of time spent on violations that have a minimal impact on safety and health. The suggested elimination of the single penalty assessment or the increase in the single penalty to $500 may lead to a substantial increase in the number of non-S&S violations contested and a refocusing of inspector and mine operator time from the S&S violations to the non-S&S violations.

However, MSHA did not intend the single penalty assessment to suggest that non-S&S violations were unimportant as long as they were promptly abated. In addition, a high level of noncompliance would indicate that the single penalty has not provided adequate compliance incentive. Further, the Court order requires the single penalty assessment program to include consideration of an operator's history of violations. As a result, the Agency has determined that certain non-S&S violations should not be eligible for a $50 single penalty assessment.

MSHA's experience with excessive history programs under the program policy letters and the public comments on the proposed rules indicate that the Agency should resolve 10 issues in order to construct an excessive history program that would equitably affect all mines. The first two of these issues, (1) whether S&S violations should be subject to excessive history assessments, and (2) whether repeat violations should be subject to excessive history assessments received considerable comment and are discussed at some length in this preamble.

The first issue is whether S&S violations should be subject to excessive history assessments. The most significant difference among this final rule and MSHA's December 1990 proposal, the January 1992 reproposal, and the two program policy letters is that this final rule does not provide for S&S violations to receive excessive history assessments. Although the Court of Appeals did not address S&S violations, the Agency had included S&S violations in the excessive history programs because it believed that applying excessive history assessments

to S&S violations would increase the deterrent effect of a civil penalty, leading to greater compliance and ultimately resulting in greater safety and health.

Therefore, MSHA initially instituted an excessive history program for S&S violations in the May 1990 program policy letter. This program subjected an S&S violation to an excessive history assessment when either: (1) There was an excessive number of violations per inspection day; or (2) there was an excessive number of repeat violations of the same safety or health standard. The excessive history program for S&S violations was continued—albeit with different criteria—in the December 1990 proposal, the January 1992 reproposal, and the January 1992 program policy letter.

On May 5, 1992, the Federal Mine Safety and Health Review Commission (Commission) ruled in *Drummond Co. Inc.*, 14 FMSHRC 661, (*Drummond)* that MSHA had exceeded its authority when it implemented an excessive history assessment for S&S violations under a program policy letter rather than through notice and comment rulemaking. The Commission held that MSHA's use of the Court of Appeals order as justification for instituting an excessive history program for S&S violations was inappropriate because the Court order had only addressed non-S&S violations. The Agency did not appeal the *Drummond* decision. However, the Commission decision affected only the excessive history program contained in the program policy letter. This rulemaking, having gone through public notice and comment, is not subject to the same procedural defect ascribed to the policy letter in the *Drummond* case.

The second and related issue is whether repeat violations should be used as a criterion for an excessive history assessment. The final rule does not subject violations to excessive history assessments based on repeat violations, whereas both proposals did. The December 1990 proposal and the May 1990 policy letter subjected all violations, under certain criteria, to excessive history assessments based on repeat violations, while the January 1992 reproposal and policy letter subjected only S&S violations, under certain revised criteria, to excessive history assessments based on repeat violations. Excessive history was applied, based on repeat violations of the same safety or health standard, as MSHA's response to a recommendation in the September 30, 1988, Department of Labor Inspector General (IG) final audit of MSHA entitled "The Mine Plan Approval and Selected Enforcement Activities." In this report, the IG recommended that progressive penalties be automatically assessed for repeated violations of the same safety or health standard. As the excessive history assessment program was based on repeat violations and would have been applied automatically, this program would have been in accord with the IG recommendation.

The comments received in response to the December 1990 proposal and the January 1992 reproposal addressed: (1) The general concept of applying the excessive history program to S&S violations; and (2) the specific criteria found in the May 1990 program policy letter and in the January 1992 reproposal and policy letter.

With respect to the general concept of applying the excessive history program to S&S violations, industry commenters had three opposing arguments. The first opposing argument was that MSHA already has a special assessment program that can be used to impose additional penalties on mines with excessive numbers of S&S or repeat violations. These commenters asserted that a computer-generated excessive history program cannot account for the unique situations at individual mines that may cause them to have high numbers of violations, but which may not be indicative of the overall level of safety and health of those work environments. They also asserted that the number of citations issued would depend on the MSHA district in which the mine is located. Consequently, the excessive history program would often wrongly target mines for additional penalties. They stated that a better approach would be to rely upon the District Manager, who is in a position to take these circumstances into account, to determine whether a mine has an excessive history of violations and who would refer those violations for special assessment.

The second opposing argument was that MSHA has nearly completed the initial violations documentation record for its pattern of violations rule. This rule took effect on October 1, 1990, and the violation history necessary for a pattern notice to be given to a specific mine is now being reached. These commenters contended that the impact of this pattern of violations rule upon compliance should be evaluated before the Agency implements an additional assessment program that would target excessive history violations.

The third opposing argument was that the new regular assessment penalty table took effect on March 1, 1992, and that the impact of these substantial increases in regular assessments on compliance should be analyzed before a new assessment program is instituted.

Commenters, including labor, although supporting the principle of an excessive history program, tied their support for such a program to MSHA revising its enforcement policies. They asserted that the current enforcement system treats mines unequally and that any excessive history program based on current enforcement practices will exacerbate the unequal treatment. They supported the industry comment that different MSHA districts have different citation issuance practices. They also stated that as mines with an "effective" miner walkaround participation receive more citations and orders because the inspector receives more help in spotting violations, an excessive history program should adjust the raw violation data to account for an "effective" miner walkaround presence.

Finally, there were some commenters who supported the general inclusion of S&S violations in the excessive history program because they believed that a systematic increase in penalty assessments would result in greater compliance with MSHA standards and, thus, greater safety and health.

With respect to comments on the specific criteria in the May 1990 program policy letter and in the January 1992 reproposal and program policy letter, nearly all industry commenters stated that both sets of proposed excessive history criteria were too inclusive and were poorly designed. As the preamble to the January 1992 reproposal contained MSHA's discussion of the comments on the May 1990 program policy letter and the Agency's reasons for changing these criteria in the reproposal, this preamble will not repeat that discussion. However, upon reviewing those comments, the Agency determined that the May 1990 program policy letter excessive history criteria should be revised in order to make the program more equitable. The Agency also decided to continue to use an excessive history assessment based on repeat violations as the response to the IG recommendation. Thus, in the January 1992 reproposal and program policy letter, an excessive history assessment would be given: (1) To all violations (both S&S and non-S&S) at mines with 20 penalty points for VPID or CVHP; and (2) to S&S violations only, when a mine had accumulated at least 10 violations of the same safety or health standard in a previous twelve month period and had a repeat violations per inspection day (RPID) greater than 0.20.

In response to this January 1992 reproposal of the specific excessive history criteria, industry commenters reiterated their general comments that the excessive history program for S&S violations was unnecessary because MSHA has its special assessment program and its pattern of violations program. With respect to their comments on the specific proposed criteria, they asserted that the reproposal criteria were still inequitable because: (1) Large mines would continue to receive a disproportionate share of excessive history assessments; and (2) the RPID criteria excluded contractor violations from an excessive history based on repeat violations because MSHA does not record the number of inspection days for a contractor. In addition, they commented that the revised excessive history criteria had significantly complicated the existing part 100 regulations, making it difficult for an operator to determine how a particular penalty would be calculated.

Commenters representing labor made similar remarks with respect to the inequity of the revised excessive history criteria, and reiterated their statements concerning the need for MSHA to revise its enforcement policies before a fair and effective excessive history program could be enacted.

In response to these commenters, MSHA re-evaluated the disaggregated assessment data by commodity, type of mine, and mine size. In this re-evaluation, MSHA found that the impact of the reproposed excessive history criteria continued to be greater on large mines than on small mines. For example, although the percentage of large underground coal mine violations that would have received an excessive history assessment would have decreased from 45 percent under the May 1990 excessive history criteria to about 8 percent under the January 1992 reproposal criteria, the percentage of small underground coal mine violations that would have received an excessive history assessment would have similarly decreased from about 6 percent to about 2 percent. Thus, although the January 1992 reproposal criteria reduced the inequity resulting from the May 1990 criteria, the excessive history program derived from the computer-generated criteria still produced an inequitable result.

A joint industry and labor comment suggested that the ultimate goal of an excessive history assessment program should be to reduce miner fatalities and injuries. In order to realize that goal, these commenters asserted that the excessive history program should target mines with higher fatality rates to improve compliance in the most effective way and to reduce the potential for fatalities. At their request, MSHA calculated the average 1991 fatality rates for mines: (1) That would have received an excessive history assessment based on the criteria in the January reproposal; and (2) that would not have received such an excessive history assessment. These average fatality rates were separately calculated for the four mining categories of: (1) Underground coal; (2) surface coal; (3) underground metal and nonmetal; and (4) surface metal and nonmetal. The results indicated that (except for underground coal) the fatality rates within each category between excessive history mines and non-excessive history mines exhibited no significant statistical difference. In underground coal, however, the fatality rate for the non-excessive history mines was substantially higher than the fatality rate for the excessive history mines. On that basis, therefore, these commenters contended that the proposed excessive history criteria and program were inherently flawed because they did not target the appropriate mines.

As a result of these comments and MSHA's analysis of several different excessive history criteria, the Agency has decided to limit the excessive history assessment program to non-S&S violations and to base it only on VPID or CVHP. MSHA agrees with the commenters that the Agency should evaluate the effect of the new penalty table and the pattern of violations rule upon compliance before it adopts an additional civil penalty program.

Nevertheless, the Agency will continue to make "excessive history" information on non-S&S violations, as well as information reflecting overall history on a mine-specific basis, available to its District Managers. This information will aid District Managers in deciding which mines may need closer monitoring and more frequent inspections. It will also aid inspectors in targeting the individual standards with which a specific mine may be having compliance difficulty. Further, this information may also be used by the District Manager to help in determining whether to request a special assessment for certain violations at individual mines. By providing excessive history information to its District Managers, the Agency will provide a useful enforcement aid to the District Manager who, in fact, is the individual best qualified to identify a special history problem.

The third issue to be resolved in order to develop an equitable excessive history program is which violations to count in determining excessive history. In the proposal, reproposal, and the program policy letters, MSHA counted all violations (S&S as well as non-S&S) in the computation for excessive history. The Agency rationale was that the general compliance level at a mine is indicated by the overall history of violations (including both S&S and non-S&S) and, therefore, the overall history of violations should be used to determine whether a mine has an excessive history of violations. In addition, with an excessive history for non-S&S violations based on the overall history of violations, operators will have more incentive to reduce the number of S&S violations because that will lower their VPID and, thereby, lessen the potential of receiving an excessive history assessment for a non-S&S violation.

MSHA received relatively few comments on this position. Some of these comments were supportive. One commenter, however, asserted that compliance with the Court of Appeals order requires MSHA to use a history of only non-S&S violations for determining history for non-S&S violations. The American Mining Congress, in support of this position in *American Mining Congress* v. *Department of Labor* (D.C. Cir. No. 92–1067) asserted that MSHA had exceeded the Court order in the May 1990 program policy letter by including S&S violations in determining excessive history for non-S&S violations. On September 14, 1992, the Court of Appeals upheld MSHA's policy of including S&S violations in the history of violations for determining excessive history for non-S&S violations. Therefore, on the basis of the rulemaking record, the Agency concludes that, as all violations are counted in the overall history for regular formula assessments for S&S violations, all violations should also be counted in determining whether a non-S&S violation is eligible for a single penalty. Thus, the determination of whether a non-S&S violation will receive an excessive history assessment is based on the overall history of all violations.

The fourth issue is the appropriate criterion to use for violation history. Since its inception, MSHA has used VPID as the measure for history of violations. MSHA uses VPID rather than the total number of violations to adjust for inspector presence in order to place all mines on a more equal basis. Some industry commenters argued that VPID should not be used for violation history for the previously cited reasons that the enforcement policies lead to differences among mines. In addition, some

commenters criticized this criterion because part 100 does not define "inspection day." Nevertheless, despite the possible differences across mines, MSHA believes that VPID is the best measure available for history of violations. Furthermore, no commenter suggested an alternative to VPID. As a result of all these considerations, the final rule retains VPID for mines as the violation history criterion for excessive history.

For contractor operations, however, the concept of average violations per inspection day cannot be used because MSHA does not record inspection days for contractors. Consequently, the previous regulations, and the proposal, reproposal, and program policy letters used average number of violations per year (CVHP) as the violation history criterion for establishing overall and excessive history, respectively. MSHA received a few comments critical of this criterion for contractors but there were no alternative suggestions. As the use of this approach has proved to be both successful and practical, the final rule retains CVHP for contractors as the violation history criterion for excessive history.

The fifth issue is the appropriate VPID or CVHP value to trigger an excessive history assessment. Although the December 1990 proposal did not contain any such specific VPID value, the May 1990 program policy letter used a VPID value of at least 1.7 (16 penalty points) to trigger an excessive history assessment. Several commenters to the December 1990 proposal stated that an excessive history assessment should be limited to only the highest penalty point category; i.e., mines with VPID equal to 20 penalty points. On the basis of these comments, MSHA reconsidered the VPID value used for an excessive history assessment and, in the January 1992 reproposal and program policy letter, used the highest penalty point category of 20 points to trigger an excessive history assessment. All of the comments on this issue supported the reproposal VPID value. An excessive history assessment applied to those mines with the highest category of penalty points continues the progressive penalty concept in the VPID and CVHP penalty point tables and provides further economic motivation for these operators to devote additional effort and resources to comply with MSHA standards. Further, the greatest penalties will be incurred by mines that have the highest non-compliance levels. Therefore, in this final rule a VPID greater than 2.1 (20 penalty points) is needed for a non-S&S violation to receive an excessive history assessment.

For contractors, although the December 1990 proposal did not contain any specific number of violations, the May 1990 program policy letter used a CVHP of 16 penalty points (more than 40 violations) to trigger an excessive history assessment. Although MSHA received no comments on the appropriateness of this CVHP value, as a consequence of shifting the VPID criterion for mines to the highest VPID category, MSHA similarly shifted the CVHP value for an excessive history assessment to the highest CVHP category of 20 points (more than 50 violations) in the January 1992 reproposal and program policy letter. MSHA received no comments on this reproposal CVHP value. Consistent with the reproposal and the VPID value for mines, the final rule requires CVHP to be 20 penalty points for a contractor violation to receive an excessive history assessment.

The sixth issue is whether a minimum number of violations should be required before an excessive history assessment is made. For example, a small surface mine may receive only three inspections during any specific two year period even though it has received its requisite semiannual inspections. In such small operations, a total of 7 or 8 non-S&S violations may be cited during these 3 inspections over a two-year period and that number of violations could result in a VPID greater than 2.1. Notwithstanding that VPID value, those operators are not necessarily the type the Agency views as having exhibited an "excessive history" of noncompliance and, thus, should not categorically receive an excessive history assessment. In order to reduce the potential for a mine to receive an excessive history assessment based on a minimal number of violations, MSHA determined in the May 1990 and January 1992 policy letters and the January 1992 reproposal to exclude a mine with fewer than 11 violations in a preceding two year period from receiving an excessive history assessment. This number, therefore, has been available for public comment since the December 1990 proposal. All of the few comments on this issue supported the concept of a minimum number of violations being a necessary criterion for an excessive history assessment. One commenter suggested that this minimum number be normalized by mine size. Normalization by mine size, however, would duplicate the effect of violations per inspection day and it would significantly complicate part 100. Thus, the final rule incorporates the approach taken in the program policy letters and the reproposal because it has proven to be both successful and practical.

The seventh issue is the type and amount of penalty associated with an excessive history assessment. In the program policy letters, the December 1990 proposal, and the January 1992 reproposal, a non-S&S violation that was ineligible for a single penalty assessment received a regular penalty assessment. A comment on the January 1992 reproposal recommended that the single penalty be a graduated penalty dependent only on the overall history of violations. They proposed a $70 single penalty for an operation with 16 penalty points for overall history, an $80 single penalty for an operation with 18 penalty points for overall history, and a $90 single penalty for an operation with 20 penalty points for overall history. They contended that their alternative would maintain the original intent of the single penalty for all timely abated non-S&S violations to receive an equal penalty regardless of the mine size, size of controlling entity, etc. while explicitly allowing overall history of violations to determine whether a violation is eligible for a single penalty. The other commenters on this issue, however, agreed with MSHA's proposal.

In resolving this issue, MSHA carefully evaluated these comments, its experience under the program policy letters, the intent of the May 1982 rule that instituted the single penalty, and the Court of Appeals order. MSHA has not adopted the recommended sliding scale single penalty for two reasons. The first reason is that the Agency's intent is to affect the overall compliance at mines that have the highest overall history of violations. Based on Agency experience, the commenter's recommended graduated scale single penalty amounts would not provide sufficient economic penalties for operators to reduce the numbers of violations. Thus, in order to encourage mines with the highest overall histories of violations to reduce both their S&S and non-S&S violations, MSHA has determined that timely abated non-S&S violations at a mine with an overall history of 20 penalty points will receive a regular penalty assessment rather than a single penalty assessment. The second reason is that the graduated scale single penalty would significantly complicate part 100. As noted earlier, the Agency agrees with commenters that an unduly complex part 100 would not aid safety and health.

The eighth issue is whether the specific excessive history criteria should be contained in part 100. The December 1990 proposal did not contain these

criteria, and all commenters on this issue stated that these criteria should be incorporated into the rule because the public has a right to notice and comment on rules that affect them. Further, some commenters stated that any changes to these criteria should be subject to notice and comment rulemaking. In response to these comments, MSHA specifically included these criteria in the January 1992 reproposal. All of the comments on this issue supported this inclusion of the criteria in part 100. In light of these reasons, the final rule remains as proposed in the January 1992 reproposal and includes the specific excessive history assessment criteria.

The ninth issue was the date from which violations would be counted for excessive history assessments. In both the December 1990 proposal and the January 1992 reproposal, MSHA proposed a starting date of January 1, 1991. Until January 1, 1993, the VPID and CVHP calculations would be based on fewer than 2 years of data. However, no excessive history assessment would be proposed until a mine had accumulated more than 10 fully paid or finally adjudicated violations.

Many industry commenters criticized the January 1, 1991, date as imposing a retroactive penalty on mine operators. They contended that violations should not be counted for the purposes of excessive history assessments until a final rule is promulgated because operators need to be given fair and adequate notice of this change in assessments. These commenters asserted that many mine operators would have contested more of their violations had they known that these violations could be a factor in determining that a future non-S&S violation would not be eligible for a single penalty assessment. It was further asserted that mine operators do not now contest every violation that they believe to be improperly cited—particularly those involving the $50 single penalty assessment—because the time and labor cost of contesting the violation is substantially greater than the penalty itself. If, however, operators had known that these violations could result in a future excessive history assessment that could raise the $50 single penalty to a $200 regular assessment (for example), then they would have contested more of these violations. In support of these assertions, one commenter noted that the contested violation rate went from an historical average of about 3 percent to about 6 percent after the publication of the pattern of violations rule in July 1990 and the May 1990 program policy letter establishing the excessive history assessment program. Thus, they concluded that to provide mine operators with adequate notice of this penalty assessment change, the violation history for an excessive history assessment would have to start no sooner than 30 days after the final rule is promulgated.

Other commenters criticized the January 1, 1991, date because the May 1990 program policy letter had already established an excessive history assessment program with retroactive starting dates back to May 1988. Thus, these commenters stated that the issue of retroactive criteria in assessing penalties is not relevant because mine operators have received adequate notice, and, therefore, the final rule should continue the policy started in the May 1990 program policy letter. They contended that continuing the existing system would minimize industry confusion about the date from which violations will be counted for excessive history when the final rule becomes effective.

Based on its review of the comments and its experience under the program policy letters, MSHA has determined that publication in the December 1990 **Federal Register** of the proposed January 1, 1991, starting date for counting violations for excessive history assessment purposes provided sufficient notice to operators of MSHA's intention. Furthermore, all violations, including non-S&S violations, have been counted in history since the interim action of December 29, 1989, and operators have been on notice of the importance of this approach since the original Court order of November 21, 1989. Thus, MSHA has determined that an effective date of January 1, 1991, for including violations in history of violations for excessive history assessments is appropriate.

The tenth issue concerns whether excessive history should be based on all violations or only on those paid or finally adjudicated. In the December 1990 proposal, the January 1992 reproposal, and the program policy letters, MSHA took the position that excessive history should be based only on violations paid or finally adjudicated. Of the few commenters on this issue, all but one supported MSHA's position that an operator has the right to exhaust all legal avenues of appeal before the Agency's authority to penalize can be invoked.

One commenter, however, noted that under certain circumstances, a mine operator may be able to avoid an excessive history assessment by contesting violations from previous inspections. This commenter suggested that in order to discourage widespread filing of notices of contest solely to minimize the length of time a violation would be included in the history compilation, all violations (including those contested) should be counted as of the date they were cited, and contested violations would be eliminated from the history of violations only if they were vacated.

Based on the comments and experience under the program policy letters, the Agency's final rule retains the proposed concept that the excessive history program should be based on violations paid or finally adjudicated because the Agency believes that it is neither appropriate nor fair to include violations in an excessive history computation that are not final and could possibly be vacated. In addition, there are substantial economic costs associated with contesting violations, and the average amount of time during which the contested violation is pending and not counted for history has been too brief for the potential financial gain to be greater than this cost. Finally, this concept is consistent with MSHA's historical practice, which has been to calculate overall history using only violations paid or finally adjudicated, and the Agency has found no evidence that operators have filed notices of contest solely to reduce the amount of time a violation is counted in overall history of violations.

Section 100.5 Special Assessments

The wording change in this section references § 100.4(b) in which an excessive history program is established for non-S&S violations. As a result, violations that are processed under the special assessment provision (§ 100.5) and that meet the excessive history criteria will receive an additional dollar penalty to reflect excessive history. Under the previous proposals and program policy letters, MSHA had included an increased penalty for excessive history for violations that receive special assessments. A few commenters contended that the additional excessive history penalty was unnecessary for a violation that has already received an increased penalty from being special-assessed. The Agency disagrees with these commenters because the circumstances governing excessive history are separate from those governing a special assessment. A special-assessed violation occurring at a mine with excessive history should receive a higher penalty than an identical special-assessed violation occurring at a mine without excessive history. On that basis, MSHA will consider excessive history, where

appropriate, on special-assessed non-S&S violations.

III. Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis (RIA) be completed for any regulation that would have an impact of at least $100 million on the economy or would have a major impact on an industry sector. As this rule does not have a major impact on the economy or the industry, MSHA has not prepared a separate RIA but the analysis contained in this preamble meets the Agency's responsibilities under the Executive Order and the Regulatory Flexibility Act.

The number of non-S&S violations with excessive history and the resulting amount assessed will be exactly the same under this rule as they would have been under the criteria in the January 1992 reproposal. The only assessment differences would be those resulting from this rule's exclusion of S&S violations from receiving an excessive history assessment.

In order to estimate the economic impact of the rule, MSHA used 1991 assessment data to estimate the number of mines and the number of non-S&S violations that would have been affected by the excessive history criteria. On that basis, MSHA determined that 109 coal mines (about 2.8 percent of all active coal mines, including mines that are intermittently active) would have received an excessive history assessment. Of these 109 coal mines, 47 would have been small mines (2.0 percent of all small coal mines), 54 would have been medium-sized mines (4.3 percent of all medium-sized coal mines), and 8 would have been large mines (3.2 percent of all large coal mines). On that same basis, MSHA also determined that 370 metal and nonmetal mines (about 3.2 percent of all metal and nonmetal mines, including a substantial number of mines that are intermittently active) would have received an excessive history assessment. Of these 370 metal and nonmetal mines, 262 would have been small mines (2.8 percent of all small metal and nonmetal mines), 106 would have been medium-sized mines (5.3 percent of all medium-sized metal and nonmetal mines), and 2 would have been large mines (2.4 percent of all large metal and nonmetal mines).

With respect to the number of violations in 1991 that would have received an excessive history assessment, MSHA determined that 872 coal mine violations (2.1 percent of all coal non-S&S violations) would have received an excessive history assessment. On the basis of mine size, 204 of these violations would have occurred at small mines (2.1 percent of all small coal mine non-S&S violations), 599 would have occurred at medium-size mines (3.5 percent of all medium-size coal mine non-S&S violations), and 69 of these violations would have occurred at large mines (0.6 percent of all large coal mine non-S&S violations). MSHA also determined that 1,999 metal and nonmetal mine violations (6.9 percent of all metal and nonmetal mine non-S&S violations) would have received an excessive history assessment. On the basis of mine size, 943 of these metal and nonmetal mine violations would have occurred at small mines (6.0 percent of all small metal and nonmetal mine non-S&S violations), 825 would have occurred at medium-sized mines (7.7 percent of all medium-sized metal and nonmetal mine non-S&S violations), and 231 would have occurred at large mines (8.7 percent of all large metal and nonmetal mine non-S&S violations).

Summarizing the cost of compliance using the violation data for calendar year 1991 and the new penalty table that became effective March 1, 1992, MSHA estimates the amounts that would have been assessed: (1) Under no excessive history program; (2) under the May 1990 program policy letter excessive history criteria; (3) under the January 1992 reproposal excessive history criteria; and (4) under the final rule excessive history criteria. A similar table that had been prepared for the January 1992 reproposal preamble was based on the old penalty table.

WHAT WOULD HAVE BEEN ASSESSED UNDER THE NEW PENALTY TABLE

Baseline	(in $ millions)	
	Total	Increase
No Excessive History	44.3	—
Excessive History (May 1990 Policy)	49.8	5.5
Excessive History (January 1992 Reproposal)	46.6	2.3
Excessive History (Final Rule)	45.3	1.0

NOTE: The amounts in the "increase" column are based on a comparison with the baseline of "No Excessive History."

As can be calculated from this table, the rule's excessive history criteria would generate a 2.3 percent increase in penalty assessments compared to a 5.2 percent increase in penalty assessments under the January 1992 reproposal excessive history criteria and a 12.4 percent increase in penalty assessments under the May 1990 program policy letter excessive history criteria.

On a per mine basis, the average non-S&S excessive history penalty assessment in 1991 would have been about $435, an increase of about $385 above the $50 single penalty. As a result, a few of the small operations that will receive an excessive history assessment may experience some resultant financial difficulties. Nevertheless, although MSHA has not performed a financial analysis of every potentially affected small mine, the Agency has determined that this increase for non-S&S violations would be unlikely to contribute significantly to a mine's closing. As a result, the Secretary has determined that this rule would not have a significant economic impact upon a substantial number of small entities.

Another consideration in determining the overall economic impact of this rule is its affect upon the rate of contested citations and orders. Several commenters asserted that the previous excessive history criteria had been a significant factor in the increased rate of contested citations and orders that has gone from a pre-1990 historical average of about 3 percent to about 6 percent in 1990, and, excluding contested citations issued from dust sample tampering, to 10.5 percent in 1991, and 9 percent through mid-1992. Although the operator's decision to contest a citation or order is discretionary and, hence, not a cost of the rule, the expected reduction in the number of contested violations due to the new excessive history criteria will reduce some operators' (as well as MSHA's) expenditures.

The preambles to the December 1990 and January 1992 proposed rules presented some 1989 and 1990 fatality and injury rate statistics for mines that: (1) Would have received an excessive history assessment; and (2) would not have received an excessive history assessment. In response to commenters, MSHA has reviewed these data in more detail. On the basis of this more detailed review, the Agency concludes that the data cannot support the argument that mines that would have received an excessive history assessment under the previous or new criteria had a statistically significant higher incidence of fatalities and injuries than mines that would not have received an excessive history assessment. However, MSHA's experience indicates that mines with higher numbers of violations have a greater potential for accidents and injuries. Consequently, MSHA has qualitatively concluded that this rule's excessive history criteria will increase overall compliance, resulting in safer mining environments and fewer fatalities and injuries.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: December 14, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Therefore, part 100, subchapter P, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

1. The authority citation for part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, and 957.

§ 100.3 [Amended]

2. Section 100.3(c) is amended by revising the first word "History" to read "Overall history" in the first sentence.

3. Section 100.4 is revised to read as follows:

§ 100.4 Determination of penalty; single penalty assessment.

(a) An assessment of $50 may be imposed as the civil penalty where the violation is not reasonably likely to result in a reasonably serious injury or illness (non-S&S) and is abated within the time set by the inspector. If the violation is not abated within the time set by the inspector, the violation will not be eligible for the $50 single penalty and will be processed through either the regular assessment provision (§ 100.3) or special assessment provision (§ 100.5). If the violation meets the criteria for excessive history under § 100.4(b), the violation will not be eligible for the $50 single penalty and will be processed through the regular assessment provision (§ 100.3).

(b) Excessive history shall be based on overall history from paragraph (c) of § 100.3. Excessive history is defined as 20 penalty points for overall history. Mines having 10 or fewer assessed violations in a preceding 24-month period will be excluded from any excessive history determination. Only violations that are paid or finally adjudicated will be included in determining excessive history. Only citations and orders issued on or after January 1, 1992, shall be considered in determining excessive history.

§ 100.5 [Amended]

4. The concluding text of § 100.5 is amended by revising the phrase "the criteria enumerated in § 100.3(a)." to read "the criteria enumerated in § 100.3(a) and § 100.4(b)."

[FR Doc. 92–30840 Filed 12–18–92; 8:45 am]

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federal register

Monday
December 21, 1992

Part VIII

Department of Education

34 CFR Part 674, et al.
Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

RIN: 1840–AB22

Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs. These programs are known collectively as the campus-based programs and are authorized by the Higher Education Act of 1965, as amended (HEA). These regulations modify provisions governing the campus-based programs, clarify existing policy, and make other necessary changes.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Sylvia Ross or Gwendolyn Dockett-Morris, Loans Branch, Division of Policy Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 4018, Washington, DC 20202–5446, Telephone (202) 708–4690. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300 between 8 a.m. and 7 p.m., Eastern time).

SUPPLEMENTARY INFORMATION: On November 13, 1990, the Secretary published a notice of proposed rulemaking for the campus-based programs in the **Federal Register** (55 FR 47438–47443). The regulations have been revised in accordance with public comments on the proposed rule and reflect changes required by the Higher Education Amendments of 1992 (Pub. L. 102–325). These changes required by the Higher Education Amendments of 1992 include program name changes in part 674, part 675, and part 676 as well as the addition of the definition of "community services" in the Federal Work-Study Program.

The Secretary believes that these regulatory changes complement the President's national education strategy of AMERICA 2000 by providing flexibility to institutions in exchange for more accountability in administering the campus-based programs.

The NPRM included a discussion of the major issues surrounding the proposed changes. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which discussion of those issues may be found:

A change in definition of "low-income individual" under § 674.33(c) of the Federal Perkins Loan Program for Federal Perkins and Direct loans (pages 47438–47439).

Clarification under § 674.47(d) that an institution does not need to have a written repayment agreement with a borrower as a precondition for waiving collection costs if a borrower makes a lump-sum payment of the full amount of principal and interest outstanding on a loan (page 47439).

An amendment in § 674.47(e) to change the limits on the amount of collection costs that may be charged to the Fund (pages 47439–47440).

A change in § 674.47(g) to increase the ability of an institution to write off small balance accounts on defaulted loans of less than $25.00 (page 47440).

A revision was made to § 674.50 to allow institutions to assign a borrower's account of at least $25.00 to the Department for collection after following regulatory requirements (pages 47440–47441).

Codification of the definition of student services under the FWS Program in § 675.2(b) for FWS students enrolled in proprietary institutions (page 47441).

A new requirement in § 676.14 for institutions that are seeking but are unable to recover FSEOG overpayments to refer to the Department those cases where the overpayment equals $25.00 or more.

Major Changes to the NPRM

As a result of the comments received in response to the NPRM, the Secretary made three changes to the proposed regulations. The write-off provisions in 674.47(g) have been amended to reduce the steps involved for an institution to write off small balance accounts of less than $25.00. Additionally, in order to make the write-off provisions consistent with the assignment provisions, the Secretary amended § 674.50 of the regulations to cover the assignment of accounts with balances of at least $25.00 to the Department for collection. Also, as a result of public comments, the Secretary increased the amount of collection costs chargeable to the Fund in § 674.47(e) from 25 percent to 30 percent for first collection efforts and from 35 percent to 40 percent for litigation and second collection efforts.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 60 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Federal Perkins Loan Program

Section 674.33(c)—Low-Income Individual

Comments: The Secretary received several comments on the proposed provision in § 674.33(c) that would redefine the term "low-income individual." Several commenters generally supported the modifications proposed here and stated that the change to the Standard Maintenance Allowance (SMA) as a benchmark would simplify the identification procedure for institutions, because SMA amounts should be easily accessible to any institution. However, a few commenters suggested adding language to the regulations to allow institutions to use professional judgment in the computation of a family's ability to pay and to allow latitude in unusual circumstances if an individual does not qualify under SMA criteria. Several commenters stated that while efforts to move toward consistency with Part F of the HEA would normally be applauded, the proposal to extend to the collection area the standards used to award financial aid is overly restrictive and without merit. Some commenters stated that, in practice, borrowers served by the extended repayment period do not want to default, but instead want to repay their student loans. Another commenter stated that the new limits would be unrealistically low for many urban areas and that those who become ineligible will continue to be unable to make larger payments than were required by the original repayment schedule in order to pay out the loan within that original 10-year repayment period. The commenters suggested that extending the borrower's repayment period an additional 10 years will not decrease default rates or reduce the cost of collection.

Discussion: Pursuant to the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the term "Standard Maintenance Allowance" has been renamed "Income

Protection Allowance" (IPA) and will be used throughout the remainder of this document. The Secretary determined that the IPA is the best indicator of a "low-income individual" and that use of IPA charts effectively reduces any burden associated with individual low-income computations being performed in the financial aid office. IPA charts are more accessible within the institution than are the annual updates of the survey issued by the Bureau of Labor Statistics and, by far, less burdensome. The Secretary maintained provisions in the regulations that permit an institution to reduce a borrower's scheduled repayments as provided in § 674.33(b)(9), to extend a borrower's repayment period as provided in § 674.33(c), and to defer a borrower's payments as provided in § 674.34(i) if the borrower is unable to make the scheduled payments due to hardship. These provisions allow institutions latitude in unusual circumstances in cases where an individual does not qualify as a low-income individual under the new requirements. The Secretary believes that student default rates, institutional default rates, and collection costs will decrease, as a result of the revised definition of a low-income individual.

Changes: None.

Comments: One commenter indicated that the proposal fails to recognize that, while student need is determined in the financial aid office, repayment is generally handled through the business office and the business office does not have access to components used in need analysis or the IPA in particular. Another commenter stated that the proposal appears designed to ease the burden of the U.S. Department of Education, which would no longer be required to develop guidelines for low-income borrowers.

Discussion: It is the responsibility of an institution, in accordance with § 668.14 of the Student Assistance General Provisions regulations, to administer adequately its Title IV student financial aid programs. The institution's administration must be coordinated in such a way that all pertinent information relative to student aid from any institutional office is communicated appropriately. In accordance with section 478 of the HEA, the Secretary publishes annually in the **Federal Register** the revised IPA table that is mailed to all institutions participating in Title IV Programs. This distribution is sufficient to provide IPA information to all institutional officials.

Changes: None.

Comments: One commenter questioned whether the new definition of a low-income individual affects student loan borrowers who were counseled and who signed promissory notes prior to the enactment of these regulations.

Discussion: The new definition of the term "low-income individual" is applicable to all Federal Perkins and Direct loans made on or after October 1, 1980.

Changes: None.

Section 674.47(d)—Waiver of Collection Costs

Comments: The majority of the commenters strongly supported the proposal in § 674.47(d) which clarifies that the institution does not need to have a written repayment agreement with a borrower as a precondition for waiving collection costs if the borrower makes a lump-sum payment of the full amount or principal and interest outstanding on a loan.

One commenter recommended that the 30-day period in which the institution may waive collection costs that are applicable to a past due balance a borrower pays after the execution of a new written repayment agreement be increased to 60 days to permit institutions and borrowers greater flexibility.

Discussion: The Secretary believes that 30 days allows sufficient time for a borrower to make payment based on a new written repayment agreement. Institutions should bear in mind that only that portion of the past due loan balance paid by the borrower within the 30-day period is subject to the provision of the waiver of collection costs.

Changes: None.

Section 674.47(e)—Limitation on costs charged to the Fund

Comments: Numerous commenters strongly objected to the proposal in § 674.47(e) to reduce the amount of collection costs that may be charged to the Fund. Several commenters suggested that rates should be a by-product of the marketplace and should be based on net results and competitive practices within the industry as opposed to being dictated by regulations. A few other commenters recommended that industry standards be used for first placements, second placements, and litigation efforts.

Additionally, a few other commenters recommended that the Department continue to allow the 33⅓ percent ceiling for first placements and the 50 percent ceiling for second placements, because these percentages reflect reasonable collection costs. Several commenters stated that in their opinion the Secretary defined "reasonable" collection costs during the development of the regulations that were published in the **Federal Register**, dated December 1, 1987, and this provision severely reduced the financial drain of the collection expenses from the Federal Perkins Loan Fund by mandating that these costs be passed on to the borrower. Several more commenters stated that there is no evidence to demonstrate that current rates are unreasonable and, therefore, no justification to limit further the amount the institution may charge the Fund. One commenter stated that it would be contradictory to state that it is reasonable for the borrower to pay current collection costs but unreasonable for the Fund to bear those expenses. A few commenters indicated that the circumstances under which those costs exceeding the proposed percentages would not be covered by the borrower are those in which either direct benefit is afforded to the Fund through prompt payment of an outstanding delinquent debt or those in which the institution has no control over costs as is the case with bankruptcy or litigation expenses. Several commenters stated that the proposed reductions are excessive and unaffordable to most institutions and would have a significantly negative impact financially. A few other commenters suggested that the reductions would prove burdensome for institutions and servicers if institutions were to have to make up the difference in the amounts collected. In addition, several commenters suggested that, considering the extensive collection efforts accounts go through, including first referral efforts, second referral agencies are usually beset with very difficult collection accounts and simply will not have the monetary incentive to pursue these accounts as necessary. As a result there will be decreases in collection returns to the Federal Government. A few commenters stated that the Department should be concerned with achieving the greatest yield rather than be preoccupied with collection rates. Some commenters questioned whether the Department has data indicating that the proposed reductions in caps on collection costs will increase high yields and thus help to preserve the Fund. These commenters suggested that if the Department has that data, it should justify its position by sharing that data with institutions before acting as proposed. Otherwise, the Department should not implement the proposal until it has the data. A few commenters objected to the Secretary's statement that excess collection costs

could be waived without affecting the contractor's, attorney's, or school's ability to receive a "fair recovery" for their efforts. These commenters stated that regardless of all the rhetoric to the contrary, the judicial system will interpret this statement in defense of the borrower, thus undercutting the Department's original position of what reasonable collection costs are. They went on to state further that a precedent has not yet been established within the judicial system supportive of the original cap and that a precedent should be established before a change is considered.

Discussion: The Secretary determined, based on public comment and a review of Departmental collection efforts, that reasonable collection costs that may be charged to the Fund should be increased from 25 percent for first placement and 35 percent for litigation and second placement (as stated in the November 13, 1990 proposed rule) to 30 percent and 40 percent respectively. Under the previous regulations, the rates were 33⅓ percent and 50 percent respectively. The Department has been successful in collection efforts at contingent fee rates that did not exceed 35 percent. Thus, the Secretary believes that collection agencies can be as successful in collecting on defaulted loans at the 30 to 40 percent rates specified above.

The Secretary believes that it is the borrower's responsibility to repay his or her loan prior to default. If the borrower does not repay prior to default, then it is reasonable to expect the borrower to pay any costs associated with collecting past due amounts. The Secretary believes that the taxpayer should not have to bear the costs for the borrower's failure to pay his or her debts. The Secretary has determined that the 33⅓ percent and 50 percent rates have been used for a long enough period of time to show that they do not significantly increase recoveries. Collection agencies do little more at the 50 percent rate than at the 33⅓ percent rate. In light of scarce Federal dollars and the Secretary's desire for all eligible students to have access to student financial aid, the Secretary believes that the Fund must not bear the expense of collection costs of a borrower who will not repay a loan. The revolving Fund will be depleted and deserving students will be denied loans, if institutions continue to charge the Fund for expenses that should rightfully be borne by a borrower who has defaulted. The Secretary has reduced the collection-costs based on a balancing of factors affecting the management of the Funds.

As stated previously in this discussion section, the Secretary believes that collection agencies can be successful in collecting defaulted loans at the 30 to 40 percent contingency fee rates. At the same time, the Secretary also believes that the reduction in collection costs chargeable to the Fund will not be burdensome or have a negative impact on the institutions or the servicers. The Secretary did state on page 47440 of the NPRM that "* * * the proposed reduction in the amount of collection costs that can be waived as to the borrower and paid from Fund assets still provides a fair recovery for the contractor or attorney * * *." The Secretary advanced this proposal to limit the amount of waived collection costs that may be charged to the Fund. The Secretary does not intend to prescribe a limit on the collection cost rate or to imply that the imposition of a collection cost at a rate in excess of that proposed here be available as a defense to a borrower. The Secretary recognizes that the amount that can be recovered from the Fund may not provide a complete recovery for the contractor or attorney, but believes that the amount recovered from the Fund still provides a fair recovery of the expenses involved in these accounts, while at the same time lessening the drain to the Fund. Furthermore, when interpreting these regulations, the judicial system should give deference to the Secretary's statement of intent in adopting the regulations. The Secretary is not just amending the regulations to change the amount of contingent fee collection costs that may be paid from Fund assets. The Secretary is also amending the regulations to permit the institution to use Fund assets to pay the actual amount of those court costs specified in 28 U.S.C. 1920. Those court costs were previously included in the amount chargeable against the percent limits on contingent fees.

Changes: The Secretary is amending § 674.47(e) by increasing the costs chargeable to the Fund to 30 percent for the first placement and 40 percent for litigation and second placements.

Comments: Several commenters indicated that unlike most schools, the Department is not restricted in its efforts to collect on assigned loans. For example, the Department is allowed to waive costs, compromise, or accept repayment terms for whatever time frame it so chooses. A few commenters suggested that if the regulations allowed for some institutional discretion in settling accounts, such as permitting the waiver of some portion of interest, the reduction in the collection costs chargeable to the Fund would not be nearly as problematic.

Discussion: The Secretary believes that while institutions have some flexibility in settling Federal Perkins Loan accounts, including the authority to waive a percentage of collection cost under § 674.47(d), a provision that would allow institutions to compromise, forgive, or forget some portion of the amount due would be detrimental to the intent of the Federal Perkins Loan Program (replenishing the Fund). At this time, the Department is not considering any proposals to allow an institution to compromise or accept repayment terms other than those allowed in the regulations at § 674.33.

Changes: None.

Comments: One commenter indicated that the Secretary's statement in the preamble to the NPRM, that said that borrowers in advanced stages of delinquency enter repayment promptly after initial demand by a new collector, is inaccurate and suggested that the Secretary obtain valid data from institutions and contractors who perform collection functions daily.

Discussion: As previously stated on page 47440 of the preamble contained in the November 13, 1990 NPRM, the Secretary has over the past 10 years negotiated over a dozen major collection contracts on defaulted student loans. Based on the Department's experience in collecting defaulted loans, which were typically in advanced states of delinquency (approximately three to five years in default), the Secretary believes that a significant portion of those defaulters who enter repayment do so promptly after initial demand by a new collector. Generally, borrowers in advanced stages of delinquency have begun to earn a substantial income, enabling them to begin repayment. These borrowers are, therefore, in a better position to repay their student loan debts on a regular basis. Opinions by guarantee agencies support the Department's position regarding borrowers in advanced stages of delinquency. Based on a study conducted by the American Management Systems, Inc., for the Department of Education (February 1989), guarantee agencies revealed that: "Most individuals involved in student loan collections [such as lenders and collection agents] recognize that student loans become more collectible over time because borrowers become more responsible—they find jobs, establish credit, and gain assets, and are in a better position to repay the loans. Most guarantors conclude that their recovery rate on accounts older than five years is from 25 percent to 70 percent. In the

first six to eight months after default, guarantors find that many borrowers are financially unable to pay."

Changes: None.

Comments: A few commenters stated that the Department should recognize that the Federal Perkins Loan Program is well managed at the institutional level and that management has resulted in a declining default rate. A few other commenters suggested that current regulations governing the area of collection costs are very complex and that the proposed regulations add further complexity. Several commenters strongly urged simplification of the regulations. Several other commenters suggested that, if the Department must make reductions in the caps on collection costs chargeable to the Fund, they be implemented through a sliding scale of reductions to allow the impact to be felt the most by institutions with the highest default rates; i.e., the higher the default rate, the lower the cap. In addition, a few commenters suggested that since the Secretary offers an incentive to the borrower in the form of waiving collection costs, an incentive should be offered to institutions to collect on accounts in the form of a graduated cap. Additionally, a graduated cap related to default rates versus an across the board cap might be viewed more favorably by the judicial system.

Discussion: The proposed regulations serve to reduce complexities in the Federal Perkins Loan Program regulations. For example, a requirement pertaining to the waiver of collection costs chargeable to the Fund under § 674.47(d) will be eliminated from the collection procedures. Institutions and borrowers will no longer be required to enter into a new written repayment agreement in order to waive collection costs for lump sum payments made on defaulted loan accounts. In addition, for institutions that hold small balance accounts, the rule under § 674.47(g) will reduce many of the write-off requirements. A sliding scale or a graduated cap concept for collection costs purposes would prove burdensome for institutions and would create unnecessary complexities in the regulations and in the overall collection process. The Secretary believes there are other less complex ways of providing incentives to institutions to collect loan payments and keep defaults down. The provisions contained in the current regulations governing the area of collection costs provide the necessary guidance that allows institutions to manage properly the Federal Perkins Loan Program.

Changes: None.

Comments: Several commenters indicated that there appears to be confusion regarding the circumstances under which reduced contingency fees can be charged to the Fund. The commenters further stated that the preamble indicates three occasions, while the proposed regulatory language implies that the new caps placed on costs chargeable to the Fund affect all collection costs incurred more than 30 days after the execution of a new repayment agreement. In addition, one commenter stated that the proposed regulations recognize that, for amounts paid later than 30 days after signing a new repayment agreement, current rate structures are justified. Therefore, the proposed regulations would only affect accounts that qualify for the waiver of collection costs. The commenter did not believe the factors listed in the proposed regulations provide a compelling argument to justify a rate reduction for this waiver period.

Discussion: The Secretary believes that it is necessary to clarify that the new limitations on the amount of contingency fee costs chargeable to the Fund apply to collection costs that have been waived by the institution in conjunction with a borrower signing a new written repayment agreement and making payments within 30 days under § 674.47(d) and to collection costs incurred by the institution more than 30 days after the execution of a new repayment agreement. The preamble (55 FR 47439) describes three instances in which an institution may charge the Fund for collection costs arising in connection with contingency fee charges. In the first situation described in the preamble, the institution, pursuant to § 674.47(d), may have agreed to waive the enforcement of some or all of the collection costs, including contingency fees. For example, if the borrower enters a new repayment agreement with the institution and repays one-half of the past-due outstanding principal and interest balance on his or her defaulted loan account within 30 days of the date of the execution of the agreement, the institution may waive the collection of one-half of the collection costs that have been incurred through the date of the payment. Payment in full can permit a full waiver of collection costs that may be charged to the Fund. To the extent that these accrued costs have been waived under § 674.47(d), the institution may charge the costs against the Fund, subject to the limitations applicable under § 674.47(e).

As under the current regulations, an institution must assess against the borrower the full amount of any collection costs incurred in collecting the remaining balance of the loan under the repayment agreement after the expiration of the 30-day waiver period. An institution may not charge the Fund for collection costs arising in connection with contingency fee charges for amounts paid more than 30 days after the signing of the repayment agreement, unless the second or third situation described in the preamble is applicable. Specifically, the institution may not charge the Fund for collection costs arising in connection with contingent fee charges for amounts paid more than 30 days after the signing of the repayment agreement unless the institution is legally barred from assessing the full amount of these costs against the borrower or unless the institution has demanded that the borrower pay these costs but the amount recovered from the borrower is insufficient to satisfy both the contingency fees and other collection costs.

Furthermore, the new limitations on the amount chargeable against the Fund do not affect an institution's ability to negotiate contingency fee arrangements and assess the borrower at a rate in excess of the limits under § 674.47(e) with respect to those amounts paid more than 30 days after the signing of the new repayment agreement. By establishing the new limitations on the amounts chargeable against the Fund, the Secretary does not intend to reduce directly or indirectly the contingency fee rate charged on recoveries outside that 30-day period.

Changes: None.

Comments: One commenter suggested that the Secretary allow institutions sufficient time to make a transition from the old limits to the new ones.

Discussion: The Secretary, by virtue of the 45 days between the publication of the regulations and their effective date, will allow sufficient time for institutions to implement these regulations and to make the transition from old to new limits.

Changes: None.

Comments: Several commenters stated that it will be necessary to renegotiate contracts with agencies in order to reduce the amount of collection costs to be retained by the agency. In addition, if the agency refuses to renegotiate the original contract, institutions could be forced to pay the difference to meet due diligence requirements. One commenter pointed out that ongoing surveys by the American Collectors Association show that fee cuts ultimately and absolutely mean substantial cuts in performance and could ultimately reduce the ability

of an agency to service accounts properly. Several commenters stated that institutions will be unable to find collection agencies willing to undertake collection responsibilities at the lower rates and that many reputable and proven collection firms will leave the student loan market forcing institutions to use less expensive collection agencies with unproven collection records. Several other commenters stated that many firms represent student loan clients in bankruptcy court, file proofs of claim, attend meetings of creditors, review bankruptcy court documents, attend confirmation hearings, object to confirmation, conduct discovery in various bankruptcy court proceedings, and contest requests for hardship discharge. A few commenters stated that it will become necessary for some firms, should institutions wish them to continue to represent them in bankruptcy cases, to charge an hourly fee for bankruptcy representation.

Discussion: Institutions must make a diligent effort to negotiate better contracts with collection firms in order to receive the best service possible. Institutions should have at least two or three collection firms from which to choose and should demand quality service and not allow agencies to dictate to them.

Changes: In response to the comments, the Secretary has amended § 674.47(e) of the regulations by increasing the amount of collection costs that may be charged to the Fund to 30 percent for first placements and 40 percent for litigation and second placements.

Section 674.47(g)—Write-offs

Comments: Several commenters fully supported the Secretary's proposal in § 674.47(g) to allow institutions to write off accounts of less than $25.00 and stated that the change makes good business sense. A few commenters stated that this change will make it much simpler to assign accounts to the Department. A few other commenters stated that while the reduction in the number of accounts subject to write-off will ease the paperwork and administrative burden on institutions it will not be cost effective to be required to comply with the provisions of § 674.47(g)(1) (i) through (iii). A commenter suggested that, rather than restricting institutional write-offs to balances under $25, the Secretary make a change to include balances under $200.

Discussion: The Secretary agrees with the commenters and does not intend for institutions to continue carrying out all of the procedures contained in current regulations in order to write off small balance accounts. Under current regulations, an institution is encouraged to assign to the Department accounts over $200. Further, it is encouraged to make those assignments before the statute of limitation period has run, since the institution need not complete the course of semiannual collection efforts prior to assigning the accounts. The new regulation is intended to increase the number of defaulted loans assigned to the Department by lowering the minimum amount that qualifies for assignment from $200 to $25 and to give institutions added incentives to assign the loans by lowering the authority to write off defaulted accounts with minimum balances from $200 or less to balances under $25.

Changes: The Secretary is revising § 674.47(g) of the regulations by removing paragraphs (g)(1)(i) through (g)(1)(iii) of this section to reduce the due diligence steps required by institutions to write off small balance amounts of less than $25.00. Further, § 674.50 is amended to include requirements for institutions to follow before assigning a borrower's account of at least $25.00 to the Department for collection.

Federal Work-Study Program

Section 675.2—Definitions

Section 675.21—Institutional Employment

Comments: The proposed change to codify the definition of "student services" to include areas in which the student employee provides direct and personal services to other students that are incidental to the training or education being offered seemed reasonable to most commenters. Another commenter felt that while there may be additional service categories not listed in the definition, the "not limited to" language would permit an institution to employ students in that service if appropriate. One commenter suggested that "reasonable accommodation services" be added to the list to comply with the new Americans with Disabilities Act (ADA). Another commenter suggested that campus clerical functions that provide direct and personal services be included. Two commenters felt that the proposal fails to address the student population at most proprietary schools that offer short-term training in a specific skill. As a result, students would be denied on-the-job experience. By limiting the types of employment permitted under the FWS Program, commenters felt that the Department is also limiting the types of job experiences students can obtain. A number of commenters believe that the areas that are proposed to be eliminated from the program can provide valuable experiences to students in their chosen field of study. These commenters further stated that the types of jobs in question actually do provide a service to students, some more directly than others. One commenter felt that work experiences should not necessarily be required to provide direct and personal services to other students in order to assist the student in obtaining future employment in his or her chosen field. The commenter felt the focus should be on work that is beneficial to the student since employers generally seek prospective employees with work experience. One commenter thought that the interpretation and language of the proposed rule went beyond the intent of the statute, which he felt was only to address the solicitation of potential students.

Discussion: Pursuant to the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the Secretary has revised the definition of "student services" to allow proprietary institutions to employ students in jobs furnishing student services only when these services are directly related to the work-study student's education. Also, in carrying out the provisions of the amendments to the HEA, the Secretary is amending § 675.21 of the regulations to allow proprietary institutions to employ students to work for the institution off campus, provided the student is employed in "community services" as defined in § 675.2.

Changes: Changed as noted above.

Federal Supplemental Educational Opportunity Grant Program

Section 676.14 Overawards

Comments: Most commenters supported the Secretary's proposal to recover the overpayments from students in cases in which the Federal share of FSEOG overpayment is $25.00 or more. However, they suggested that funds recovered by the Secretary, minus the reasonable fee, be remitted to the institution to assist other financially needy students. Two commenters indicated that a provision should be added to the regulations stating that, if an overpayment occurs that did not result from student error, the student is not held liable and the institution cannot recover the overpayment from the student. A typical example of this circumstance would be if a student reports his resources and needs accurately and, due to the fault of the

institution, the amount of his grant is not recalculated, resulting in an overpayment. Several commenters stated that recovery in such an instance can prove burdensome and unjust to the student already living on a meager income. Four commenters expressed concern over the timeframes required for institutions to notify the student. One commenter stated that requiring a second notification to recover overpayments within a 30-day period is redundant. According to the commenter, the time expenditure and additional mailing costs incurred are not warranted and would prove to be counter-productive to the intent of recovery.

Another commenter would like to see a 120-day period instead of the 90-day limitation. One commenter stated that students generally do not make serious arrangements until the beginning of the next term when they want to return to school. A third commenter stated that the 30-day period is restrictive and unreasonable during some time periods, such as semester breaks when it may be difficult to contact a student. In addition, the student is only permitted a 10-day time period to make repayment arrangements and, if he or she fails to do so, would become ineligible for additional Title IV funds. The commenter suggested that consideration should be given to allow for two reasonable attempts within a 60-day period and allow for a 120-day period for the student to make repayment arrangements. One commenter suggested that the restrictive 30-day period be omitted and the institution should be given the option to submit the minimum $25.00 if all other attempts to collect have been futile. One commenter felt the proposal would restrict flexibility and force some students out of eligibility because of $25.00 overpayment. The commenter stated that the current regulations appear reasonable because they allow the student and institution to work together to resolve the overaward situation without undue hardship on either party.

Several commenters suggested patterning the proposed FSEOG overpayment system more closely after the Federal Pell Grant system, especially in the areas of institutional errors and institutional discretion. According to a commenter, the Federal Pell Grant overpayment system has a "floor" of $100.00 and the commenter felt the $100.00 floor was more appropriate than the $25.00 floor that is being proposed. Another commenter stated that FSEOG overpayments will, as a rule, be much smaller than Federal Pell Grant overpayments; therefore, mandating the referral of FSEOG overpayments to the Department raises the question of cost effectiveness. One commenter did not believe it would be a useful expenditure of scarce institutional resources to have to make reports to the Secretary. Another commenter felt that this proposal would be paper intensive for just $25.00.

Discussion: Pursuant to section 413D of the HEA, the Secretary must allocate funds to each eligible institution for use in each fiscal year. Similarly, an institution may not use funds allocated for a given award year to make FSEOG disbursements to students in any subsequent award year, or to satisfy any other obligation incurred after the end of the designated award year.

In the majority of instances, any funds recovered by the Secretary will not be recovered in the award year that the FSEOG was disbursed to the student. Therefore, those recovered funds cannot be returned to the institution that made the award to use in a subsequent award year. In cases where an institution recovers FSEOG funds from students made in a prior award year, the institution must adjust award expenditures and administrative cost allowances for the year that the award was made. In fact, as a result of a recovery by an institution of a prior year award or grant, the institution is obligated to repay money to the Federal Government. The FISAP is the mechanism by which repayment is reported to the Department.

If, however, an institution is able to recover an overaward in the award year in which the award was disbursed, the institution may keep and reuse that amount.

The Secretary agrees with the commenters that the number of notifications and timeframes during which notification must be sent by an institution to a borrower to recover an overpayment may be counter-productive to the intent of recover. The Secretary, therefore, has eliminated this provision in the final rule.

The Secretary believes that when a student receives the benefit of an increased award amount, the student is obligated to repay that amount regardless of whether the institution is also liable for the overpayment. This requirement is prescribed in § 676.14(d)(1). In cases where the institution is liable for an overpayment because the institution failed to follow the procedures set forth in the regulations, the institution must follow the procedures prescribed in § 674.14(d)(2).

The proposed FSEOG overpayment provisions are closely patterned after the Federal Pell Grant "Recovery of overpayments" provisions found in 34 CFR 690.79 of the Federal Pell Grant Program regulations. The Federal Pell Grant Program regulations do not provide for institutional discretion when an institutional error has caused an overpayment. In addition, the Federal Pell Grant Program regulations do not provide a "floor" of $100.00 as one commenter suggested. If an institution makes an overpayment for which the institution is liable in the Federal Pell Grant Program, regardless of the amount, Federal Pell Grant Program regulations require the institution to restore those funds to its Federal Pell Grant account whether or not it collects from the student.

If an institution makes an overpayment for which it is not liable, the institution must help the Secretary recover the overpayment regardless of the amount. The Secretary believes that the proposed requirements for recovery of FSEOG overpayments are less stringent than those required by the Federal Pell Grant Program, in part because institutions are not required to notify the Secretary regarding overpayments of less than $25.00.

Changes: In response to the comments, the Secretary has amended § 676.14(d)(3) of the regulations by removing the time-frames in which an institution would be required to contact the student and the Secretary following the initial written notification to the student requesting payment in full.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Most of the changes in these final regulations were published for public comment on November 13, 1990 (55 FR 47438–47443). However, some of these changes are needed to conform the regulations to statutory changes made by Public Law 102–325. Public comment would have no effect on the content of these changes. Therefore, the Secretary has determined that publication of a proposed rule for these changes is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for

major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education, Loan programs—education, Student aid reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.003 Federal Work-Study Program; and 84.038 Federal Perkins Loan Program)

Dated: December 15, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends parts 674, 675, and 676 of title 34 of the Code of Federal Regulations as follows:

PART 674—[AMENDED]

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

2. The heading of Part 674 "PERKINS LOAN PROGRAM" is revised to read "FEDERAL PERKINS LOAN PROGRAM".

3. Section 674.33 is amended by revising paragraph (c)(2) to read as follows:

§ 674.33 Repayment

* * * * *

(c) * * *

(2) *Low-income individual.* (i) For Federal Perkins loans and Direct loans made on or after October 1, 1980, the institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines during the course of the repayment period that the borrower is a "low-income individual." The borrower qualifies for an extension of the repayment period on the basis of low-income status only during the period in which the borrower meets the criteria described in paragraph (c)(2)(i) (A) or (B) of this section. The term *low-income individual* means the following:

(A) For an unmarried borrower without dependents, an individual whose total income for the preceding calendar year did not exceed 45 percent of the Income Protection Allowance for the current award year for a family of four with one in college.

(B) For a borrower with a family that includes the borrower and any spouse or legal dependents, an individual whose total family income for the preceding calendar year did not exceed 125 percent of the Income Protection Allowance for the current award year for a family with one in college and equal in size to that of the borrower's family.

(ii) The institution shall use the Income Protection Allowance published annually in accordance with section 478 of the HEA in making this determination.

(iii) The institution shall review the borrower's status annually to determine whether the borrower continues to qualify for an extended repayment period based on his or her status as a "low-income individual."

(iv) Upon determining that a borrower ceases to qualify for an extended repayment period under this section, the institution shall amend the borrower's repayment schedule. The term of the amended repayment schedule may not exceed the number of months remaining on the original repayment schedule, provided that the institution may not include the time elapsed during any extension of the repayment period granted under this section in determining the number of months remaining on the original repayment schedule.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

4. Section 674.47 is amended by revising paragraphs (d), (e), and (g) to read as follows:

§ 674.47 Costs chargeable to the Fund.

* * * * *

(d) *Waiver: collection costs.* Before filing suit on a loan, the institution may waive collection costs as follows:

(1) The institution may waive the percentage of collection costs applicable to the amount then past-due on a loan equal to the percentage of that past-due balance that the borrower pays within 30 days after the date on which the borrower and the institution enter into a written repayment agreement on the loan.

(2) The institution may waive all collection costs in return for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

(e) *Limitations on costs charged to the Fund.* The institution may charge to the Fund the following collection costs waived under paragraph (d) of this section or not paid by the borrower:

(1) A reasonable amount for the cost of a successful address search required in § 674.44(b).

(2) Costs related to the use of credit bureaus as provided in § 674.45(b)(1).

(3) For first collection efforts pursuant to § 674.45(a)(2), an amount that does not exceed 30 percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to § 674.45(c)(1)(ii), an amount that does not exceed 40 percent of the amount of principal, interest and late charges collected.

(5) For collection costs resulting from litigation, including attorney's fees, an amount that does not exceed the sum of—

(i) Court costs specified in 28 U.S.C. 1920;

(ii) Other costs incurred in bankruptcy proceedings in taking actions required or authorized under § 674.49;

(iii) Costs of other actions in bankruptcy proceedings to the extent that those costs, together with costs described in paragraph (e)(5)(ii) of this section, do not exceed 40 percent of the total amount of judgment obtained on the loan; and

(iv) 40 percent of the total amount recovered from the borrower in any other proceeding.

(6) If a collection firm agrees to perform or obtain the performance of both collection and litigation services on a loan, an amount for both functions that does not exceed the sum of 40 percent of the amount of principal, interest and late charges collected on the loan, plus court costs specified in 28 U.S.C. 1920.

* * * * *

(g) *Write-offs.* (1) An institution may write off an account with a balance of less than $25.00, including outstanding principal, accrued interest, collection costs and late charges.

(2) An institution that writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(3) If an institution receives a payment from a borrower after the loan has been written off, it shall deposit that payment into the Fund.

5. Section 674.50 is amended by revising paragraph (a)(2) to read as follows:

§ 674.50 Assignment of defaulted loans to the United States.

(a) * * *

(2) The amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs and late charges is $25.00 or greater; and

* * * * *

PART 675—[AMENDED]

1. The authority citation for Part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756a, unless otherwise noted.

2. The heading of Part 675 "COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS" is revised to read "FEDERAL WORK-STUDY PROGRAM AND JOB LOCATION AND DEVELOPMENT PROGRAM".

3. Section 675.2(b) is amended by adding, in alphabetical order, definitions of "Community services" and "Student services" to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Community services: Services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs. These services include—

(1) Such fields as health care, child care, literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

(2) Work in service opportunities or youth corps as defined in section 101 of the National and Community Service Act of 1990, and service in the agencies, institutions and activities designated in section 124(a) of that Act;

(3) Support to students with disabilities; and

(4) Activities in which a student serves as a mentor for such purposes as—

(i) Tutoring;

(ii) Supporting educational and recreational activities; and

(iii) Counseling, including career counseling.

* * * * *

Student services: Services that are offered to students that are directly related to the work-study student's training or education and that may include, but are not limited to, financial aid, library, peer guidance counseling, and social, health, and tutorial services.

* * * * *

4. Section 675.21(b) is revised to read as follows:

§ 675.21 Institutional employment.

* * * * *

(b) A proprietary institution may employ a student to work for the institution, but only in jobs that—

(1)(i) Are on campus; or

(ii) Are in community service;

(2) Involve the provision of student services as defined in § 675.2;

(3) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(4) Do not involve the solicitation of potential students to enroll at the proprietary institution.

PART 676—[AMENDED]

1. The authority citation for Part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

2. The heading of Part 676 "SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM" is revised to read "FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM".

3. Section 676.14 is amended by revising paragraph (d)(3) to read as follows:

§ 676.14 Overawards.

* * * * *

(d) * * *

(3)(i) If the institution makes an overpayment for which it is not liable, it shall promptly attempt to recover the overpayment by sending a written notice to the student requesting payment in full. Failure to make repayment of the overawarded funds renders the student ineligible for further Title IV aid until final resolution of the overpayment.

(ii) If a student objects to the institution's overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted prior to referring the overpayment to the Secretary.

(iii)(A) If an institution fails to collect the overpayment after taking the action required by paragraphs (d)(3)(i) and, if applicable, (ii), of this section, and the Federal share of the overpayment is $25.00 or more, it shall notify the Secretary identifying the Federal share of the overpayment, the student's name, most recent address, telephone number, and other relevant information. After notifying the Secretary under this section, the institution need make no further recovery efforts.

(B) If an institution fails in its attempt to collect the overpayment and the Federal share of the overpayment is less than $25.00, the institution need make no further recovery efforts.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

[FR Doc. 92–30869 Filed 12–18–92; 8:45 am]

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Monday
December 21, 1992

Part IX

Department of Education

Chapter 1—Migrant Education Coordination Programs for State Educational Agencies; Notices

DEPARTMENT OF EDUCATION

Chapter 1—Migrant Education Coordination Program for State Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Year 1992.

SUMMARY: The Secretary amends the notice of final funding priorities for fiscal year (FY) 1992 grant competitions under the Chapter 1—Migrant Education Coordination Program for State Educational Agencies, by adding an additional absolute priority to the list of priorities that may be used in the FY 1992 competition for funds. Under this priority, the Secretary will support projects to expand State efforts to recruit currently migratory children so that more children can be served by the Migrant Education Program (MEP). Funds will be reserved for State educational agencies (SEAs), whose MEP funds are insufficient to support adequate recruitment into the program of currently migratory children throughout their States, to expand their recruitment efforts in coordination with other States. The Secretary also announces a competitive preference and other considerations to direct the use of these funds.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ann Weinheimer, Office of Migrant Education, U.S. Department of Education, room 2149, 400 Maryland Avenue, SW., Washington, DC 20202–6135. Telephone: (202) 401–0744. Deaf and hearing impaired individuals may call (202) 401–1985 or, if unavailable, the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Background

Authority for the Chapter 1–Migrant Education Coordination Program for SEAs is contained in section 1203 of the Elementary and Secondary Education Act of 1965. Under this program, awards are made to SEAs to improve the interstate and intrastate coordination of educational programs available for migratory students. The statute directs the Secretary to make awards to SEAs in consultation with, and with the approval of, the States.

On February 28, 1991, the Secretary published in the Federal Register (56 FR 8610) a notice of eight final funding priorities from which the Secretary could select in conducting competitions for funds appropriated in FY 1991 and FY 1992. For FY 1991, the Secretary awarded grants under two of those priorities—a national project for a system of credit exchange and accrual for secondary students and a migrant stop-over site service center—and, for FY 1992, the Secretary made continuation awards to these grant recipients.

Since publication of the notice of absolute priorities, migrant education officials in many States have asked the Department to determine whether section 1203 funds could be made available to enhance their efforts to recruit currently migratory children (those who have migrated across school district boundaries during the past 12 months). These officials believe that there may be significant numbers of currently migratory children residing in their States who do not benefit from the MEP because the SEAs have inadequate funds for identifying these children and recruiting them into the program. These officials have indicated that the problem is particularly acute in States with relatively small MEP formula allocations.

Currently migratory children are among the Nation's neediest populations, and a more concerted effort is needed to identify and recruit these children. Large numbers of children who could benefit from the supplemental educational services that the MEP offers are never identified in any of the several States in which they reside during the year. Data provided to the Department by the Migrant Student Record Transfer System (MSRTS) also suggest that many other currently migratory children are identified in only one State, even though they have crossed State boundaries.

This priority seeks to help States to provide appropriate supplemental MEP assistance to currently migratory children, thereby helping to ensure that those children reach the higher levels of achievement called for in AMERICA 2000, the President's strategy to help the Nation move itself toward the six National Education Goals. MEP programs for preschool and school-aged children are designed to help migratory children enter school ready to learn (Goal 1), increase their high school graduation rate (Goal 2), and demonstrate competency in challenging subjects such as English, mathematics, science, history, and geography (Goal 3). In addition, MEP programs help young adults attain full literacy, increase their ability to compete in a global economy, and exercise the rights and responsibilities of citizenship (Goal 5).

So that greater numbers of currently migratory children may benefit from the MEP and the assistance it provides in helping the Nation to meet these goals, the Secretary announces this new funding priority. Under this priority, the Secretary will reserve a portion of funds available for the FY 1992 Migrant Education Coordination projects for competitive grants to SEAs whose MEP allocations are inadequate to enable them to identify and recruit all the currently migratory children who move to or pass through their States, and to expand and strengthen the capacity of State recruitment efforts in ways that may yield long-term benefits for the State and, at the same time, promote activities that enhance interstate or intrastate coordination. Publication of this notice of final priority follows discussions at a meeting in December, 1991, of the National Association of State Directors of Migrant Education (NASDME) about the need to find ways to identify and recruit more currently migratory children. At that meeting, NASDME concurred with a proposal to use section 1203 funds to support the kinds of projects described in this final priority.

The Secretary published a notice of proposed priority to include the new final priority for the Migrant Education Coordination Program on June 16, 1992 (57 FR 26832). That notice solicited comments from the public, which have been considered in development of this notice of final priority. Funding of particular projects under this priority will depend upon the availability of funds and the quality of the applications received. The publication of this final priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the Federal Register.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, the Department received comments from four State educational agency officials in three States. The major concerns raised by these officials were about the priority's purpose and usefulness, and about the requirement that awarded funds be used for supplemental identification and

recruitment activities. In addition, several alternative suggestions were offered.

The final priority is an appropriate activity under the Migrant Education Coordination Program and will serve to benefit migratory children who reside both in small and large allocation States that compete successfully for funds by enabling those States to carry out expanded identification and recruitment activities and provide services to newly recruited migratory children. No changes have been made based on the comments received.

A more detailed analysis of the comments received in response to the notice of proposed priority is published as an appendix to this final priority notice.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference under the Migrant Education Coordination Program for SEAs for the following priority. Assuming the availability of funds, the Secretary will reserve funds under section 1203 of the Act for competitive grants to SEAs only for projects that implement this priority.

Absolute Priority

Under this priority, SEAs will compete for grants to cover the costs of supplemental efforts to identify and recruit currently migratory children who are found to be residing in their States during portions of the grant period. Funds will be made available to SEAs whose 1991–92 or 1992–93 MEP project year allocations are insufficient to permit full recruitment of currently migratory children in their States. The Secretary will consider only applications from SEAs that establish the likelihood that a State's proposed activities will address unmet national needs by increasing the number of identified currently migratory children beyond levels now permitted by its MEP allocations.

Aside from recruiting these children and entering data on them into the MSRTS, recipients will undertake activities to enhance the likelihood that currently migratory children found in one locality will subsequently be identified in other localities to which the children migrate, so that MEP services on an interstate or intrastate basis can become more available to these children.

At a minimum, project activities must include—

(1) Development of a plan of operation that promotes the most efficient and effective use of program funds for supplemental activities designed to recruit additional currently migratory children into the MEP under 34 CFR 201.20(a)(3) and 201.30;

(2) Assessment of these children's special educational needs, as required by 34 CFR 201.32 and, where possible, provision of necessary instructional or support services to them; and

(3) Special activities designed to enhance the likelihood that these children will continue to be recruited and served by the MEP as they migrate within the State or to other States. These special activities must include, but need not be limited to—

(a) Advance notification, on the basis of information gathered during the recruitment and any follow-up interviews, to other States and localities of the locations to which the children are expected later to move and their expected dates of arrival;

(b) Communication with those other States and localities to determine whether the children made those moves and were subsequently recruited;

(c) Use of the recruitment interview to determine whether the children's families have migrated previously to the location in which they were identified, and whether they are likely to do so in the future;

(d) Development and distribution of information to parents and guardians of migratory children about the MEP and its parental involvement components, and on how to contact school officials and service agencies in all other locations to which they migrate; and

(e) Recruitment efforts planned for future years, using the SEA's allocation of MEP funds, in those areas of the State in which currently migratory children are found to be likely to return.

SEAs that receive grants will be required to coordinate, to the extent possible, all recruitment and other activities supported by this project with other States to or from which identified children migrate and to seek appropriate assistance from the MEP Coordination Centers, the Chapter 1 Technical Assistance Centers, and the Rural Technical Assistance Centers.

Restrictions on the Use of Project Funds

To ensure that activities funded under this priority are devoted to recruiting migratory children whom an SEA otherwise would not identify, program funds may be used only for recruitment activities that supplement, rather than supplant, resources that the SEA otherwise would expend on the State's recruitment activities. Moreover, since all activities must be designed to promote interstate or intrastate coordination, funds awarded under this competition may not be targeted for identifying or recruiting formerly migratory children.

Competitive Preference and Other Considerations

The Secretary gives a competitive preference under 34 CFR 75.105(c)(2) of up to 15 additional points to applicants that establish, under the selection criterion in 34 CFR 205.31(a)(2) (yielding a maximum of 25 points), the likelihood that their States' "proposed activities address unmet national needs" by increasing the number of identified currently migratory children beyond levels now permitted by their MEP allocations.

Depending on the availability of funds, the Secretary will allocate up to $1.2 million from funds appropriated in FY 1992 only for projects that meet this priority. In keeping with the belief that insufficient recruitment may be particularly severe in States that receive relatively small MEP allocations, the Secretary will award grants from two different applicant pools. One pool will consist of SEAs whose MEP allocations for either the 1991–92 or 1992–93 program years were $500,000 or less. Fourteen States qualify for this pool on this basis. The other applicant pool would be open to all other SEAs. Of the total amount made available to the Secretary, up to two-thirds will be available for awards to the smaller allocation SEAs. The remainder will be available for awards to the larger allocation SEAs. The actual amounts awarded to SEAs in each pool of applicants will depend on both the total amount available to fund activities that support this priority and the number and quality of applications. The Secretary believes that these procedures will permit program funds to be concentrated in States with the most limited means to recruit migratory children, and at the same time, allow SEAs with larger MEP allocations, but with a demonstrable need for additional funds with which to recruit these children, the opportunity to benefit from the program.

Intergovernmental Review:

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early

notification of the Department's specific plans and actions for this program.

APPLICABLE PROGRAM REGULATIONS: 34 CFR part 205

Program Authority: 20 U.S.C. 2783.

Dated: November 24, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.144, Chapter 1—Migrant Education Coordination Program for State Educational Agencies)

Appendix—Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, four State officials from three States submitted comments. An analysis of the comments and of the significant changes, if any, since publication of the notice of proposed priority follows. The comments are grouped into four areas—the purpose of the priority; the usefulness of the priority; why activities supported by the priority must be supplemental to those supported by State Migrant Education Program (MEP) allocations; and suggestions for alternatives to the priority.

Purpose of the Priority

Comment: Three commenters questioned the purpose of the proposed priority. For the most part, these commenters criticized the priority as not addressing the particular problems that States receiving very small MEP allocations have in operating their migrant programs. In this regard, two commenters expressed opinions that the notice of proposed priority inaccurately claimed that the proposal had been approved by the meeting in December, 1991, of the National Association of State Directors on Migrant Education (NASDME), and that NASDME had approved a more general project to address MEP funding inequities faced by small allocation States. In addition, one commenter thought that activities to identify eligible, but previously unidentified, children would probably not increase a State's funding sufficiently to provide meaningful educational services to the newly identified children. Finally, one commenter expressed concern that the proposed priority completely prohibited the use of project funds to recruit formerly migratory children.

Discussion: This priority was discussed publicly with State officials at the 1991 meeting of NASDME. The written proposal that the Office of Migrant Education provided to all State officials at that meeting, and that NASDME overwhelmingly approved, outlined the same project purpose and basic requirements as the proposed priority published in the Federal Register on June 18, 1992. The priority is intended to assist States to conduct more comprehensive Statewide identification and recruitment in order to locate and provide services to previously unidentified currently migratory children. The purpose of the priority is not to alleviate the special needs of States with relatively small MEP allocations. That can only be done through a change in the formula for allocating MEP funds found in section 1201 of the Chapter 1 statute. The Secretary has reserved up to two-thirds of the funds available for this priority for States with relatively small allocations in the belief that, because of the costs of required administrative activities and myriad demands placed upon their small MEP budgets, these States may have particular problems finding adequate MEP resources with which to conduct Statewide identification and recruitment activities.

In addition, the priority permits the recruitment of formerly migratory children provided that these children are identified and recruited only in the process of identifying and recruiting currently migratory children. The priority does not permit States to target their identification and recruitment activities on formerly migratory children because doing so would be inconsistent with the purposes of the Migrant Education Coordination Program, which is to promote interstate or intrastate coordination of migrant education programs and projects. There are no interstate or intrastate issues involved with the education of formerly migratory children.

Changes: None.

Usefulness of the Priority

Comment: Two commenters expressed doubts about the usefulness and cost-effectiveness of targeting supplemental Federal funds for additional identification and recruitment in States with small MEP allocations. They argued that the identification and recruitment of few migratory children in those States are due to factors such as small migrant populations, short growing seasons, and poor State leadership, that are beyond the scope of the project. In addition, the commenters expressed the opinion that reserving the majority of funding for States with small MEP allocations would result in projects focused on interstate rather than intrastate migratory children. Finally, one commenter expressed concern that many grantees would be likely to focus their efforts on recruiting children from families employed in less mobile agricultural activities such as food processing and dairy farming.

Discussion: The Secretary agrees that the inability of small allocation States, to date, to identify and recruit more currently migratory children may be due to the factors that the commenters suggests rather than to difficulties associated with the small size of their MEP grants. This is why the Secretary, in evaluating project applications, will consider only those State applications that establish the likelihood that funded activities will increase the number of identified currently migratory children who reside in those States, beyond the level identified with their regular MEP allocations. States that cannot demonstrate a legitimate basis for conducting these activities will not be eligible for awards. However, the Secretary does not believe that any State's agricultural growing season is so short that migratory children who reside for short periods in those States cannot benefit from the availability of needed MEP services.

Moreover, while ineffective State leadership may contribute to inadequate identification and recruitment efforts in certain States, unidentified migratory children still suffer from a lack of access to MEP services. The Secretary does not believe that these children should be denied those services merely because States in which they reside have not been sufficiently aggressive in identifying and recruiting them. To the extent that these project funds can stimulate those States both to recruit and serve more migratory children and to focus more attention on previously unidentified children, the projects will have addressed the intent of the priority. The selection criteria in 34 CFR 205.31 and the competitive preference announced as part of this priority provide the Secretary with an adequate basis to evaluate whether a State's application is well considered and has a sound plan of operation. If the Secretary is not satisfied with the quality of a State's application, the application will not be funded.

The Secretary finds no reason to distinguish in this project between interstate and intrastate migratory children. The two groups of unidentified but eligible migratory children suffer from the same lack of MEP services. Similarly, the Secretary finds no reason to exclude from the project efforts to recruit previously unidentified migratory children whose parents or guardians work in less mobile activities like food processing and dairy farming. If that employment is properly

determined to be temporary or seasonal, and children have moved with family members employed in these industries, the children are migratory and warrant the program's attention.

Changes: None.

Supplemental Nature of Project Funds

Comment: Two commenters raised questions about the requirement that identification and recruitment activities supported with project funds would have to supplement activities supported by the States' MEP allocation. One of the commenters also requested that the final priority include language that would allow a State to borrow from their regular MEP allocation to finance additional identification and recruitment activities, and then reimburse its MEP account for the cost of those additional activities out of a grant awarded under this priority.

Discussion: The purpose of this priority is to provide one-time financial assistance to States that can demonstrate that they can use these funds for a special effort to identify, recruit, and serve significant numbers of previously unidentified migratory children. Accordingly, grants awarded under this priority must be used only to supplement a State's regularly planned identification and recruitment efforts. States that, in the past year, have spent disproportionate amounts of their section 1201 funds on additional one-time identification and recruitment efforts would not be expected to continue to spend those additional sums in developing their overall plans for use of project funds. The Secretary anticipates that potential grantees will fully understand and accept the scope of the priority and expects that, except in situations described in the preceding sentence, they will not diminish their planned section 1201 identification and recruitment activities in anticipation of receiving an award under this priority. Moreover, since the section 1203 funds that will support these projects must be expended for interstate and intrastate coordination activities, they also cannot be used, as the commenter proposed, to replace section 1201 funds that a State had planned to expend to augment its identification and recruitment efforts.

Changes: None.

Alternative Suggestions

Comment: Some commenters suggested several alternatives to the proposed priority. These alternatives included a priority for activities to improve the recruitment of currently migratory intrastate children only, and a priority for establishment of a migrant child identification network that would rely on electronic technology and multi-State staff efforts.

Discussion: The Secretary believes that the priority announced in this notice is preferable to both proposals. The purpose of these grants is to increase and serve as many previously unidentified currently migratory children as possible. As noted in response to a comment on the usefulness of the priority, the Secretary sees no reason to differentiate between unidentified interstate and intrastate migratory children. With regard to the proposal for a multi-State migrant child identification network, the technological aspects of the proposal appear to be partially duplicative of the Migrant Student Record Transfer System (MSRTS), a computerized database that maintains detailed information on identified migrant children nationwide and serves to facilitate the transfer of those children's records from school to school. Other portions of the suggested network would appear to rely upon the collective commitments and efforts of individuals throughout the Nation, and would require further study to determine their efficiency and potential usefulness. While the Secretary welcomes bi-State or multi-State proposals that might advance the goals of this priority more efficiently than would single State proposals, activities to support this priority should not be delayed while that study occurs.

Changes: None.

[FR Doc. 92-30898 Filed 12-18-92; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No.: 84.144A-3]

Chapter 1—Migrant Education Coordination Program for State Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: Provide financial assistance for projects designed to improve interstate and intrastate coordination of migrant education program activities among State educational agencies and local educational agencies. This program seeks to help States to provide appropriate supplemental assistance to currently migratory children, thereby helping to ensure that those children reach the higher levels of achievement called for in AMERICA 2000, the President's strategy to help the Nation move itself toward the six National Education Goals.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: February 12, 1993.

Deadline for Intergovernmental Review: April 13, 1993.

Applications Available: December 21, 1992.

Available Funds: $1,200,000.

Estimated Range of Awards: $60,000–$250,000.

Estimated Average Size of Awards: $85,000.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 15 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations in 34 CFR part 205.

Priority: The absolute priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

For Applications or Information Contact: Dr. Ann Weinheimer, U.S. Department of Education, 400 Maryland Avenue, SW., room 2149, FOB #6, Washington, DC 20202–6135. Telephone (202) 401–0744. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2783

Dated: December 14, 1992.

John T. MacDonald,

Assistant Secretary Elementary and Secondary Education.

[FR Doc. 92-30899 Filed 12-18-92; 8:45 am]
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13	(869-017-00041-8)	25.00	Jan. 1, 1992
14 Parts:			
1-59	(869-017-00042-6)	25.00	Jan. 1, 1992
60-139	(869-017-00043-4)	22.00	Jan. 1, 1992
140-199	(869-017-00044-2)	11.00	Jan. 1, 1992
200-1199	(869-017-00045-1)	20.00	Jan. 1, 1992
1200-End	(869-017-00046-9)	14.00	Jan. 1, 1992
15 Parts:			
0-299	(869-017-00047-7)	13.00	Jan. 1, 1992
300-799	(869-017-00048-5)	21.00	Jan. 1, 1992
800-End	(869-017-00049-3)	17.00	Jan. 1, 1992
16 Parts:			
0-149	(869-017-00050-7)	6.00	Jan. 1, 1992
150-999	(869-017-00051-5)	14.00	Jan. 1, 1992
1000-End	(869-017-00052-3)	20.00	Jan. 1, 1992
17 Parts:			
1-199	(869-017-00054-0)	15.00	Apr. 1, 1992
200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
1-149	(869-017-00057-4)	16.00	Apr. 1, 1992
150-279	(869-017-00058-2)	19.00	Apr. 1, 1992
280-399	(869-017-00059-1)	14.00	Apr. 1, 1992
400-End	(869-017-00060-4)	9.50	Apr. 1, 1992
19 Parts:			
1-199	(869-017-00061-2)	28.00	Apr. 1, 1992
200-End	(869-017-00062-1)	9.50	Apr. 1, 1992
20 Parts:			
1-399	(869-017-00063-9)	16.00	Apr. 1, 1992
400-499	(869-017-00064-7)	31.00	Apr. 1, 1992
500-End	(869-017-00065-5)	21.00	Apr. 1, 1992
21 Parts:			
1-99	(869-017-00066-3)	13.00	Apr. 1, 1992
100-169	(869-017-00067-1)	14.00	Apr. 1, 1992
170-199	(869-017-00068-0)	18.00	Apr. 1, 1992
200-299	(869-017-00069-8)	5.50	Apr. 1, 1992
300-499	(869-017-00070-1)	29.00	Apr. 1, 1992
500-599	(869-017-00071-0)	21.00	Apr. 1, 1992
600-799	(869-017-00072-8)	7.00	Apr. 1, 1992
800-1299	(869-017-00073-6)	18.00	Apr. 1, 1992
1300-End	(869-017-00074-4)	9.00	Apr. 1, 1992
22 Parts:			
1-299	(869-017-00075-2)	26.00	Apr. 1, 1992
300-End	(869-017-00076-1)	19.00	Apr. 1, 1992
23	(869-017-00077-9)	18.00	Apr. 1, 1992
24 Parts:			
0-199	(869-017-00078-7)	34.00	Apr. 1, 1992
200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
500-699	(869-017-00080-9)	13.00	Apr. 1, 1992
700-1699	(869-017-00081-7)	34.00	Apr. 1, 1992
1700-End	(869-017-00082-5)	13.00	Apr. 1, 1992
25	(869-017-00083-3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1-1.60	(869-017-00084-1)	17.00	Apr. 1, 1992
§§ 1.61-1.169	(869-017-00085-0)	33.00	Apr. 1, 1992
§§ 1.170-1.300	(869-017-00086-8)	19.00	Apr. 1, 1992
§§ 1.301-1.400	(869-017-00087-6)	17.00	Apr. 1, 1992
§§ 1.401-1.500	(869-017-00088-4)	38.00	Apr. 1, 1992
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1, 1992
§§ 1.1401-End	(869-017-00094-9)	26.00	Apr. 1, 1992
2-29	(869-017-00095-7)	22.00	Apr. 1, 1992
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00099-0)	20.00	Apr. 1, 1992
500-599	(869-017-00100-7)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992
27 Parts:			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–017–00103–1)	11.00	[6]Apr. 1, 1991
28	(869–017–00104–0)	37.00	July 1, 1992
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–017–00107–4)	32.00	July 1, 1992
900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–017–00109–1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869–017–00110–4)	16.00	July 1, 1992
1911–1925	(869–017–00111–2)	9.00	[7] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–017–00113–9)	30.00	July 1, 1992
30 Parts:			
1–199	(869–017–00114–7)	25.00	July 1, 1992
200–699	(869–017–00115–5)	19.00	July 1, 1992
700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–017–00117–1)	17.00	July 1, 1992
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
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1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–017–00119–8)	30.00	July 1, 1992
190–399	(869–017–00120–1)	33.00	July 1, 1992
400–629	(869–017–00121–0)	29.00	July 1, 1992
630–699	(869–017–00122–8)	14.00	[8] July 1, 1991
700–799	(869–017–00123–6)	20.00	July 1, 1992
800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–017–00125–2)	18.00	July 1, 1992
125–199	(869–017–00126–1)	21.00	July 1, 1992
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–017–00128–7)	27.00	July 1, 1992
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–017–00130–9)	32.00	July 1, 1992
35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–017–00134–1)	17.00	July 1, 1992
38 Parts:			
0–17	(869–013–00135–4)	24.00	July 1, 1991
18–End	(869–013–00136–2)	22.00	July 1, 1991
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
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52	(869–013–00139–7)	28.00	July 1, 1991
53–60	(869–017–00140–6)	36.00	July 1, 1992
61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–017–00142–2)	17.00	July 1, 1992
86–99	(869–017–00143–1)	33.00	July 1, 1992
100–149	(869–013–00144–3)	30.00	July 1, 1991
150–189	(869–017–00145–7)	21.00	July 1, 1992
190–259	(869–017–00146–5)	16.00	July 1, 1992
260–299	(869–017–00147–3)	36.00	July 1, 1992
300–399	(869–017–00148–1)	15.00	July 1, 1992
400–424	(869–017–00149–0)	26.00	July 1, 1992
425–699	(869–017–00150–3)	26.00	July 1, 1992
700–789	(869–017–00151–1)	23.00	July 1, 1992
790–End	(869–017–00152–0)	25.00	July 1, 1992

Title	Stock Number	Price	Revision Date
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–017–00153–8)	9.50	July 1, 1992
101	(869–013–00154–1)	22.00	July 1, 1991
102–200	(869–017–00155–4)	11.00	[8] July 1, 1991
201–End	(869–017–00156–2)	11.00	July 1, 1992
42 Parts:			
1–60	(869–013–00157–5)	17.00	Oct. 1, 1991
61–399	(869–013–00158–3)	5.50	Oct. 1, 1991
400–429	(869–013–00159–1)	21.00	Oct. 1, 1991
430–End	(869–013–00160–5)	26.00	Oct. 1, 1991
43 Parts:			
1–999	(869–013–00161–3)	20.00	Oct. 1, 1991
1000–3999	(869–013–00162–1)	26.00	Oct. 1, 1991
4000–End	(869–013–00163–0)	12.00	Oct. 1, 1991
44	(869–013–00164–8)	22.00	Oct. 1, 1991
45 Parts:			
1–199	(869–013–00165–6)	18.00	Oct. 1, 1991
200–499	(869–013–00166–4)	12.00	Oct. 1, 1991
500–1199	(869–013–00167–2)	26.00	Oct. 1, 1991
1200–End	(869–013–00168–1)	19.00	Oct. 1, 1991
46 Parts:			
1–40	(869–013–00169–9)	15.00	Oct. 1, 1991
41–69	(869–013–00170–2)	14.00	Oct. 1, 1991
70–89	(869–013–00171–1)	7.00	Oct. 1, 1991
90–139	(869–013–00172–9)	12.00	Oct. 1, 1991
140–155	(869–013–00173–7)	10.00	Oct. 1, 1991
156–165	(869–013–00174–5)	14.00	Oct. 1, 1991
166–199	(869–013–00175–3)	14.00	Oct. 1, 1991
200–499	(869–013–00176–1)	20.00	Oct. 1, 1991
500–End	(869–013–00177–0)	11.00	Oct. 1, 1991
47 Parts:			
0–19	(869–013–00178–8)	19.00	Oct. 1, 1991
20–39	(869–013–00179–6)	19.00	Oct. 1, 1991
40–69	(869–013–00180–0)	10.00	Oct. 1, 1991
70–79	(869–013–00181–8)	18.00	Oct. 1, 1991
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48 Chapters:			
1 (Parts 1–51)	(869–013–00183–4)	31.00	Oct. 1, 1991
1 (Parts 52–99)	(869–013–00184–2)	19.00	Oct. 1, 1991
2 (Parts 201–251)	(869–013–00185–1)	13.00	Dec. 31, 1991
2 (Parts 252–299)	(869–013–00186–9)	10.00	Dec. 31, 1991
3–6	(869–013–00187–7)	19.00	Oct. 1, 1991
7–14	(869–013–00188–5)	26.00	Oct. 1, 1991
15–End	(869–013–00189–3)	30.00	Oct. 1, 1991
49 Parts:			
1–99	(869–013–00190–7)	20.00	Oct. 1, 1991
100–177	(869–013–00191–5)	23.00	Dec. 31, 1991
178–199	(869–013–00192–3)	17.00	Dec. 31, 1991
200–399	(869–013–00193–1)	22.00	Oct. 1, 1991
400–999	(869–013–00194–0)	27.00	Oct. 1, 1991
1000–1199	(869–013–00195–8)	17.00	Oct. 1, 1991
1200–End	(869–013–00196–6)	19.00	Oct. 1, 1991
50 Parts:			
1–199	(869–013–00197–4)	21.00	Oct. 1, 1991
200–599	(869–013–00198–2)	17.00	Oct. 1, 1991
600–End	(869–013–00199–1)	17.00	Oct. 1, 1991
CFR Index and Findings Aids	(869–017–00053–1)	31.00	Jan. 1, 1992

Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 30, 1992. The CFR volume issued April 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.